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CURRENT TOPICS

Mr. Theodore Goddard

THE name of the late Mr. JOHN THEODORE GODDARD was well known in the profession. He became known to the general public as legal adviser to the DUCHESS OF WINDSOR at the time of the Abdication. His courage in flying to Cannes, with some risk to his health and in the company of his doctor, in an effort to settle the crisis, will long be remembered. An old pupil of the City of London School, he was admitted as a solicitor in 1902. He commenced practice on his own account at once and the firm of Theodore Goddard & Co., which he then commenced, is now famous. Among the many social enterprises which he promoted or fostered were the Green Room Benevolent Fund for Actors, including the Valentine Memorial Pension Fund, for the foundation of which he was responsible, and the Stage Golfing Society. He was also for many years solicitor to the Newspaper Society.

Major David Graham Pole

THE late Major DAVID GRAHAM POLE, who died on 26th November at the age of seventy-five, was a solicitor who proved, in his later years, how well suited is the training for the "lower" branch to the provision of recruits for responsible judicial work. As chairman of the rent tribunal dealing with the Marylebone and Paddington area immediately after the passing of the Furnished Houses (Rent Control) Act, 1946, and later, on sub-division of the area, of the South Paddington Rent Tribunal, he impressed all who came before him with his scrupulous fairness and thoroughness. His area, one of the most heavily bombed and over-populated in the country, had good cause for gratitude to the late Major Pole and his associates on the bench of his tribunal for their splendid efforts in mitigating some of the worst economic effects of the scarcity of housing accommodation without unfairness to the sorely pressed landlord. The late Major Pole, who was admitted as a solicitor in Edinburgh in 1900, later practised in London. He served in both the South African war and the 1914–18 war, and was severely wounded at Loos. Later he studied Indian questions and acquired some practice in Indian appeals to the Privy Council. He sat as Labour Member of Parliament for South Derbyshire from 1929 to 1931 and was Parliamentary Private Secretary to the Secretary of State for War.

Crown Privilege

IN an action on 5th December at Winchester Assizes, in which a plaintiff sued for damages for personal injuries alleged to have been received while on remand in custody, Mr. Justice DEVLIN said that he had an uneasy feeling that justice may not have been done because the material before him was not complete. No doubt daily reports would have been prepared while the plaintiff was in the prison hospital, but the judge did not know what they were. Crown privilege was becoming a serious obstruction to the administration of justice. In all the cases of Crown privilege he had encountered, he had never had a case where it had been suggested it would

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be injurious to the public interest if the public knew the contents of the documents which the Crown declined to disclose. In each case it had been said that it would be contrary to the public interest to disclose them because they belonged to a class of documents prepared by civil servants, which must be kept secret in all circumstances.

The Solicitors' Journal: "Notes of Cases" in 1953

WE have already referred (*ante*, p. 565) to the major changes in the field of law reporting which are to take place at the beginning of next year. From the end of 1952 both *The Times Law Reports* and the *Weekly Notes* will cease publication, and concurrently a new weekly series of full reports, known as the *Weekly Law Reports*, will be inaugurated by the Incorporated Council of Law Reporting. We are happy to announce that, by arrangement with the Incorporated Council, our "Notes of Cases" in 1953 will include a summarised report of every case to be reported in the *Weekly Law Reports*, contributed by the Council's reporters and published, normally, within three weeks of the giving of judgment. These arrangements, we are confident, will secure for readers of THE SOLICITORS' JOURNAL a still more comprehensive and rapid service of notes of recent decisions.

Investment in Private Companies

LORD PIERCY, chairman of the Industrial and Commercial Finance Corporation, in an address at Swansea University College on 5th December, spoke of the problem of finding investors to hold, buy, or subscribe for the shares of "private-minded" private companies, where—as is usual these days—estate duty questions and other fiscal problems make it impossible or undesirable for all the shares to continue to be held within the family or families concerned. Such investments, he said, were unsuitable for private investors and had only a limited appeal to most insurance companies. He added that the controlling shareholders in a typical private company do not wish their shares to get into the hands of trade competitors or to be led into the flotation of the company as a public company. "They do not want to be improved, or interfered with, or to have outside directors thrust upon them." He suggested that there should be institutional investors of the sleeping or non-interfering types. Under present circumstances the difficulty appears to be, as *The Times*' "City Notes" of 6th December comments, that the capital issues control severely restricts the expansion of the capital of investment trusts.

The Judge's "View"

JUDGES, like ordinary mortals, sometimes want to see for themselves. Occasions like the visit of the then Mr. Justice BIRKETT to a North London cinema to inspect the lighting, or of the LORD CHIEF JUSTICE to some City offices to inspect a nameplate, usually achieve their deserved publicity. Sometimes the mountain comes to Mahomet, and the strains of piano and other music are heard in the High Court precincts. High Court judges have to be judges of nearly everything, including, as Mr. Justice ROXBURGH'S visit on 4th December to two dress shops in Stratford showed, displays of women's clothing. The action was based on an alleged imitation of a shop window display. Saying that he did not notice any similarity between the two displays, his lordship added: "I think most gowns look much about the same. As a mere man, I think there may have been some subtlety in the display of gowns which eluded my observation. I don't think I am competent to study the draping of ladies' gowns." Other judges have dealt with matters on which they were necessarily ignorant with more reckless verve. A learned county court judge, it is recorded in Mr. C. W. MUIR'S "Justice in a Depressed Area," announced in an Admiralty case that he had no experience of the towing of vessels, but that he proposed to apply the same principles as he would if the case involved a large lady being towed by a small dog. It is also on record that the late Mr. Justice Eve was reversed after deciding that eight bars of the famous tune "Colonel Bogey" were not a substantial part of the tune. He never concealed that he was not a music lover.

Happiness in the Measure of Damages

THE assessment of pain and suffering in terms of monetary damages is a simple matter when compared with that of the loss of expectation of human life. Since the large sums awarded in *Rose* v. *Ford* [1937] A.C. 826 and the other early cases following the passing of the Law Reform (Miscellaneous Provisions) Act, 1934, the varying judicial opinions on the subject have attained some measure of reconciliation, and lower sums are awarded than formerly. What modern slang calls "a new low" was reached in a case in the Queen's Bench Division on 1st December, when BARRY, J., assessed damages under this head at £75, on the ground that the deceased was unhappily married. On his marriage he had changed his religion to that of his wife, who was a Roman Catholic, and at the time of his death he was living apart from her, and with another woman. His wife refused to divorce him. Counsel had submitted that the damages for loss of expectation of life should be £50.

Standard of Care in Air Travel

A PLAINTIFF in a recent action against British Overseas Airways Corporation, Mr. T. L. HORABIN, wrote to *The Times* of 2nd December complaining of the provision in the Carriage by Air Act, 1932, that, in order to recover damages for personal injuries and loss against companies carrying passengers by air, a passenger had to prove that an officer of the company had brought about the loss by his wilful misconduct, or such default as is considered by the law of the court hearing the case to be equivalent to wilful misconduct. Costs of lengthy trials and probable appeals were too heavy for the average plaintiff to meet, according to the writer, and he suggested that this created a privileged position for air companies. As a remedy, he proposed that air passengers should form their own association in order to protect their interests by co-operatively bearing the legal costs of members injured in air crashes and of legal representation at inquiries. The association should also aim at securing amendment of the 1932 Act. There is much force in his observation that the Act was passed when air travel was in its infancy. Now that air travel is considered to be as safe as land or sea travel, the application of a different standard of care in actions for personal injuries against air passenger companies seems to be an anachronism.

Examination Fodder

AN amusing story is circulating around the Temple to the effect that a student with a taste for antiquarian research recently discovered that, according to an ancient and unrepealed rule of his honourable society, each candidate for examination is entitled to a ham sandwich and a pint of beer. It is said that the Benchers, after much consideration, upheld his contention. They discovered, however, a further rule to the effect that each gentleman on entering the examination room must hand in his sword to the usher under penalty of a fine of thirty shillings. We fear that in these circumstances the beer and ham sandwiches will continue to be purchased in the taverns along the Strand.

TOWN AND COUNTRY PLANNING: FINANCIAL PROVISIONS—III

As mentioned in the last part of this article, it is an important feature of the new financial provisions for town and country planning that the right to receive a compensation payment should, so far as possible, run with the land, and sub-cll. (2) and (3) of cl. 2 of the new Bill were drafted with this object in view. In future, therefore, land will normally be sold with an assignment of the right.

Some doubt was cast by the decision of the House of Lords in *Earl Fitzwilliam's Wentworth Estate Co.* v. *Minister of Housing and Local Government* [1952] A.C. 362 on the validity of an assignment of the right in connection with a sale of land at a price covering both land and right.

In that case the appellants had offered land for sale with an assignment of the relevant claim on the £300m. fund at a price in excess of the land's existing use value. The Central Land Board made a compulsory purchase order, subsequently confirmed by the appropriate Minister, for the acquisition of the land, claiming the right to acquire compulsorily land which an owner refused to sell at existing use value. The appellants contended, *inter alia*, that such a claim was inconsistent with the terms of s. 64 of the 1947 Act, which made the right to receive a payment out of the fund transmissible.

The House of Lords upheld the Central Land Board's claim. The following appears in Lord Porter's speech, at p. 379: "It was desired to make it clear that the compensation was not personal to one who was the owner at the appointed day but was transmissible by or from him. It is in fact transmissible in all cases except as part of the consideration given to the purchaser of the land in exchange for an undertaking to pay the development charge. The limitation upon transmission imposed by the exception does not conflict with the provisions of the subsection. It merely ensures that the right to transmit the compensation shall not be used to increase the price charged for the interest assigned to a sum greater than the present use value of that interest." Again, Lord Goddard said, at p. 381: "The landowner has, no doubt, the right to participate in the compensation fund, and he can still assign that right as he can assign any other chose in action. The only thing that he cannot do is to assign the right to a purchaser as part of the consideration of the purchase . . ."

In future, of course, it will be normal for an owner to assign the right as part of the consideration of the purchase. In view of the importance which now attaches to the right being held by the owner for the time being of the land, it may be asked—

(1) are past assignments of rights to purchasers as part of the purchase consideration valid; and

(2) whatever the position in the past, does the new Bill make them valid in the future?

There is nothing at all in the new Bill which expressly deals with the matter.

Despite the wording of the speeches quoted above, it seems to the writer that any assignments of this nature which have actually taken place in the past are perfectly valid and effectual. To the extent that the Central Land Board exercised their powers they could clearly prevent such a transaction taking place, and this the speeches recognise. Where, however, the sale of the land and the assignment of the right were completed before any exercise by the Board of their powers, the assignment would be entirely within the terms of s. 69 and be valid. It would then be too late for the Board to exercise their powers, and there seems to be no method by which the transaction could be reopened and upset.

Clause 3 (2) of the new Bill withdraws the power of the Board to purchase land compulsorily and, if the foregoing opinion is correct, there cannot in future be any restriction on an assignment of this nature. Accordingly there is no reason why an assignment of the relevant right should not be included in the conveyance of the land. It remains, however, personal property and may still become separated from the land by operation of law, e.g., on death, though, presumably, the Central Land Board will use their new powers of giving or withholding approval to assignments to reunite it with land as far as possible.

Proviso (*b*) to cl. 2 (1) provides that, *inter alia*, s. 64 shall have effect as if the preceding provisions of the Bill, i.e., those providing that payments out of the £300m. fund shall not be made, had not been passed, but provision had instead simply been made for postponing these payments; the proviso goes on to say, however, that any assignment after the passing of the Act *may* describe its subject-matter in terms appropriate to those preceding provisions. The short effect of this seems to be that after the Bill has become an Act an assignment may refer either to the right to receive a payment out of the £300m. fund or to a claim to be satisfied in accordance with s. 2 (1) of the new Act to be. Until the Bill becomes an Act, however, assignments should, strictly, relate to the right to receive a payment out of the £300m. fund.

The rule, no claim–no compensation, and the setting of the admitted amount of a claim as the upper limit of any compensation for planning restrictions and, when combined with the existing use value, as the compensation for the value of the land on a compulsory acquisition, make it most important to be able, before contracting to purchase land, to ascertain the existence of any claim, the admitted amount, and the holder of the claim. The White Paper states (para. 44) that provision will have to be made for registering against the land the maximum compensation payable. Unfortunately, there is no provision in the new Bill to this end, although the setting up of the register should be one of the first steps to be taken; its absence will undoubtedly accelerate the trend that is sure to occur in departing from the 1947 development value standard.

In the meantime, until the register is set up, it will be necessary to obtain the relevant details from the prospective vendor, though, in practice, on sales by auction it will be impossible, and on sales by private treaty, to say the least, difficult, to obtain these until after contract. Obviously a prospective vendor will be reluctant to disclose the amount of a claim before contract, though its amount and very existence are of importance to the prospective purchaser.

It seems, on balance, that the register should be a public one in which anyone can search regardless of the wishes of the owner, after the fashion of the local land charges register, rather than a private one such as the register of titles kept by the Chief Land Registrar, in which searches can only be made on the proprietor's authority.

One could wish that the proposed register could be combined with one of those already existing to save a further increase in the number of searches and inquiries which have to be made. It seems likely, however, that practical considerations will dictate that it should be kept by the Central Land Board.

So far the compensation proposals of the White Paper have been looked at primarily from the point of view of a person who holds both the land and the claim. What compensation will be paid where the two have become separated?

The present owner of the land may not be the holder of the relevant claim for one of two reasons, namely, because—

(1) although he owned the land on 1st July, 1948, and was the original claimant, he has since assigned the claim; or

(2) he was not the owner on the 1st July, 1948, but purchased his land subsequently and his vendor retained the claim when selling.

In the first type of case the owner, or any subsequent purchaser from him, will receive no compensation should the development of the land be restricted, nor, if his land is compulsorily purchased, will he receive more than the existing use value. The assignee is in an equally unenviable position. Whatever he may have paid when he bought the claim, he will receive nothing unless the land is restricted or compulsorily acquired in such a way that the owner would be entitled to compensation if he were still the holder of the claim. And then all the assignee will receive is limited so as not to exceed the amount he paid for the claim; he cannot profit and he may well lose all he paid (White Paper, para. 52).

Where land is restricted from development in a case such as this, the way seems open for some bargain between the present owner of the land and the present holder of the claim, because the claim is worth very much more to the former than to the latter. In the new Bill there is no restriction on the right to assign the claim at any time up to the date of payment (reg. 7 of the Claims for Depreciation of Land Values Regulations, 1948, which, in effect, makes the 31st December, 1952, the last date for any assignment, is presumably overridden) so that the landowner could wait to buy back the claim until after the planning restrictions have been applied to his land, though naturally the longer he waits the higher is the price likely to be. Although such an assignment might greatly increase the Government's liability, the Central Land Board could not under cl. 2 (2) of the new Bill withhold their consent.

In the second type of case the vendor who retained the claim will be paid by way of compensation so much of the admitted amount of the claim as will make up the amount he received for his land to the amount of the 1947 unrestricted value (White Paper, para. 49). Thus, no vendor who heeded the Central Land Board's advice to sell at existing use value will be prejudiced by having done so. Similarly, a vendor who adopted a middle course and sold at a price somewhere between existing use value and the 1947 unrestricted value will not be prejudiced, provided, of course, that he retained the claim, for the compensation will make his price up to the latter value.

If, subsequent to the sale, the vendor assigned the claim to a third party, presumably he will get nothing, and the assignee will only receive what the vendor would have received up to the amount of the price paid for the assignment. So here again a bargain may be worth while, though it is not clear that such a transaction will be recognised, and it would in any case require the approval of the Central Land Board.

As was indicated in the first part of this article, a purchaser from a vendor retaining the claim, who subsequently paid development charge, may receive part of the charge back by way of compensation equivalent to the difference between the price he paid and the 1947 unrestricted value.

Lucky will be the purchaser who managed to buy land at existing use value, or at any rate at something less than the 1947 unrestricted value, and who had not commenced his development before 18th November, 1952. He has obtained his land cheaply, in effect, at the expense of the Government who, as mentioned in the last paragraph but two, will be making up his vendor's price, but the Government do not intend to reclaim from him any part of the compensation which they pay to his vendor (White Paper, para. 51).

As mentioned in the first part of this article, cl. 2 of the Bill provides that claims for payments out of the £300m. fund shall be satisfied "in such manner, in such cases, to such extent, at such times and with such interest" as may hereafter be determined. The cases and extent have been dealt with; it remains to treat of the manner, times, and interest.

It may be that compensation will be paid in cash and not by the issue of Government Stock as was intended for payments out of the £300m. fund. Persons entitled to compensation under the new arrangements will have to put in a claim for it in accordance with procedure yet to be established.

As to the time of payment, it will, in the words of the Minister of Housing and Local Government, be "Pay as you go." Payment will only be made if and when the development of the land is actually restricted or the land is compulsorily acquired, but where this has occurred before the full amending legislation comes into force or where some payment is due to a vendor who sold voluntarily between 1st July, 1948, and 18th November, 1952, at less than the 1947 unrestricted use value, or to a person who has paid a development charge, it is likely that the payments will be made some time in 1954.

The precise intentions of the Government as to payment of interest are not very clear from the White Paper, but probably most of those due to receive payment in 1954 will receive interest at a rate to be specified up to the date of payment, while others who only suffer restrictions later will have added to their payment interest for a limited period only, e.g., 1948 to 1954.

Finally, on the question of compensation for planning restrictions, it must be pointed out that compensation may in some cases have to be repaid to the Government. It is not unknown for planning proposals to change over the years, so that development may in, say, 1960, be permitted on land though permission was refused in 1952. If compensation is paid to the owner for the 1952 refusal, it is reasonable that it should be repaid in consideration of the 1960 permission, and the future legislation will contain a provision on these lines. It is intended that compensation paid shall be recorded in the register to be established as mentioned above, so that a prospective liability of this nature will be ascertainable (White Paper, para. 44). Payments already made under s. 59 of the 1947 Act may similarly be repayable, and, on a purchase of property in respect of which such a payment may have been made, the purchaser should inquire as to the amount of any payment, for, if he receives permission to develop, the liability for repayment may rest on him.

It remains to discuss the savings and special provisions contained in cl. 3 of the new Bill and the Government's policy on the compulsory purchase of land.

R. N. D. H.

We regret that, owing to extreme pressure on space, the second of Mr. Harold Lever's articles on the Defamation Act, 1952, and Richard Roe's usual contribution under the title "Here and There," have been unavoidably held over. Both these series will be resumed next week.

Oldham Development Plan

The Minister of Housing and Local Government has approved with modifications the above development plan. The plan, as approved, will be deposited in the council offices for public inspection.

OUR CHRISTMAS APPEAL

IT is our custom to call our readers' attention at this season of the year to a matter in which solicitors have special influence and responsibility—the support of charities. This concerns every reader, not only professionally but personally. This year our advertisement pages have contained appeals from no fewer than ninety-four different organisations which need financial assistance in order to carry on their good work. May we ask you to read these appeals with as much care as you read the editorial pages?

The usefulness, and even the good faith, of charities has quite often been seriously questioned since the advent of the Welfare State. It has been said that they have served their purpose and are now outmoded. This is far from the truth. To-day there is more, not less, scope for charities. Relieved of some of their more fundamental obligations, these organisations are now in the position to assist those who would have been reluctantly passed by in the days before the State assumed its greater responsibilities. But Government departments are cumbersome organisations with a tendency to think in terms of statistics rather than of the human beings they are created to serve. No matter how comprehensive the regulations, how wise and far-seeing the administration, no State, as we know it, could ever hope to cater for all the human afflictions of mind, body or estate. There will always be the case not covered by regulations.

And so we make our appeal. We shall not try to draw your attention to individual charities by name—for that would be invidious—but will describe those whom they serve. All the organisations referred to in this article make their appeals in THE SOLICITORS' JOURNAL, and for your assistance we have compiled an alphabetical list of them which appears on pp. 822–823, *post*. They nearly all depend entirely on voluntary subscriptions. To them money has more than its usual value. It may mean the difference between extending a helping hand and having to turn away a deserving case. Which alternative it shall be depends on us. The voluntary workers are there to aid the helpless. They do not ask for praise. As the medical director of a voluntary hospital in the Middle East said in his report for last year: "Medical, scientific and ethical standards . . . come before material gain or prestige." If they have the necessary financial support they will carry on the good work.

There are organisations which cater for practically everyone who is in need of help—the blind, the deaf and dumb, the crippled, ex-servicemen, the clergy, the aged and infirm, unwanted children, distressed gentlefolk, lepers, epileptics, mental cases . . . we could go on for a very long time. Whichever cause attracts you or your client, you can be sure that your assistance will help those less fortunate than yourself.

As we read this article perhaps it would be fitting if we turned our thoughts to those who cannot see the printed word, which occupies so much of our lives. At the breakfast table and on the train to the office it is almost a ritual to read the morning's copy of *The Times*. At the office our attention is constantly engaged by words written, typed or printed, and going home there is, of course, the evening newspaper. After tea we relax with a book, play canasta, watch television or visit the cinema. All these everyday things are denied to those who cannot see. Nevertheless, the blind refuse to remain the docile prisoners of darkness. With the help of voluntary organisations they can now read and play cards. Many thousands of them belong to the library which lends them, free of charge, specially prepared books in braille. There are specially embossed playing cards which enable the unseeing to play their favourite games.

Training of the blind is an important work which is undertaken by voluntary societies. If you have a piano at home that needs tuning it is quite probable that you will employ a blind person who has been specially trained. There are also workshops for the blind, nursery schools for younger children and even a college that teaches boys and girls shorthand-typewriting. Training and aid is given to men and women who lost their sight in the service of their country during the two world wars. Perhaps these are the hardest cases of all.

The blind no longer seek pity. They try to live normal, independent lives and wish to earn their own living. But all their resolution, their cheerfulness and their perseverance can come to nothing if we ignore them. Institutions exist for the welfare of the blind and they give help in ways additional to those provided by public authorities. We can lighten the lives of the blind so easily by replenishing the funds of these organisations.

If you own a television set perhaps you have turned on the picture but not the sound. It is a strange experience under these conditions to watch, say, the political discussion "In the News," a group of speakers having an argument without emitting a sound. That is just a taste of what life can be to the deaf. Imagine walking past Orators' Corner at Hyde Park and not hearing the speakers, or crossing the road and being unable to hear the oncoming traffic. It is a cruel fate to have been born deaf but, only too often, those so handicapped are also dumb. Happily, there are associations which have been formed to look after these unfortunate people. You may have seen one of these institutions at work in the British film "Mandy," which was showing at local cinemas about three months ago. If you saw this film you will know something of the hard work and the endless patience that these organisations use in teaching young deaf children to talk and become useful, normal persons.

Amongst the other work of these organisations, some of which were founded by the deaf and dumb themselves, is the provision of weekly money grants to necessitous cases, Christmas gifts to those in mental hospitals and institutions, and grants towards the training of welfare workers. Lip-reading classes and social clubs are important features of these charities and one organisation maintains a hosfel for deaf working boys in North London. Advice is freely given to the deaf on the purchase of hearing aids, and there is much research work undertaken. Help is needed for these charities to carry on their work amongst those whose handicap means a life of silence, isolation and loneliness.

The self-respect of the crippled is restored by doing useful work in the workshops and crippleages maintained by charity. Many crafts are taught, including chair-seating in cane and rush, basketry, rug making and artificial flower making. It is here that disabled persons are taught to overcome their handicaps and to become useful and happy citizens. Rates of pay are standard and out of their wages they contribute towards their keep. Unfortunately, that is not enough, and more money is needed to maintain the homes and workshops. For those unfortunate people who will never again be able to run, swim or even travel on the top deck of a bus, we should extend a helping hand.

Rheumatism is sometimes supposed to be a sign of old age. It is a common enough disorder and is not, in fact, confined

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As to the time of payment, it will, in the words of the Minister of Housing and Local Government, be "Pay as you go." Payment will only be made if and when the development of the land is actually restricted or the land is compulsorily acquired, but where this has occurred before the full amending legislation comes into force or where some payment is due to a vendor who sold voluntarily between 1st July, 1948, and 18th November, 1952, at less than the 1947 unrestricted use value, or to a person who has paid a development charge, it is likely that the payments will be made some time in 1954.

The precise intentions of the Government as to payment of interest are not very clear from the White Paper, but probably most of those due to receive payment in 1954 will receive interest at a rate to be specified up to the date of payment, while others who only suffer restrictions later will have added to their payment interest for a limited period only, e.g., 1948 to 1954.

Finally, on the question of compensation for planning restrictions, it must be pointed out that compensation may in some cases have to be repaid to the Government. It is not unknown for planning proposals to change over the years, so that development may in, say, 1960, be permitted on land though permission was refused in 1952. If compensation is paid to the owner for the 1952 refusal, it is reasonable that it should be repaid in consideration of the 1960 permission, and the future legislation will contain a provision on these lines. It is intended that compensation paid shall be recorded in the register to be established as mentioned above, so that a prospective liability of this nature will be ascertainable (White Paper, para. 44). Payments already made under s. 59 of the 1947 Act may similarly be repayable, and, on a purchase of property in respect of which such a payment may have been made, the purchaser should inquire as to the amount of any payment, for, if he receives permission to develop, the liability for repayment may rest on him.

It remains to discuss the savings and special provisions contained in cl. 3 of the new Bill and the Government's policy on the compulsory purchase of land.

R. N. D. H.

We regret that, owing to extreme pressure on space, the second of Mr. Harold Lever's articles on the Defamation Act, 1952, and Richard Roe's usual contribution under the title "Here and There," have been unavoidably held over. Both these series will be resumed next week.

Oldham Development Plan

The Minister of Housing and Local Government has approved with modifications the above development plan. The plan, as approved, will be deposited in the council offices for public inspection.

OUR CHRISTMAS APPEAL

IT is our custom to call our readers' attention at this season of the year to a matter in which solicitors have special influence and responsibility—the support of charities. This concerns every reader, not only professionally but personally. This year our advertisement pages have contained appeals from no fewer than ninety-four different organisations which need financial assistance in order to carry on their good work. May we ask you to read these appeals with as much care as you read the editorial pages?

The usefulness, and even the good faith, of charities has quite often been seriously questioned since the advent of the Welfare State. It has been said that they have served their purpose and are now outmoded. This is far from the truth. To-day there is more, not less, scope for charities. Relieved of some of their more fundamental obligations, these organisations are now in the position to assist those who would have been reluctantly passed by in the days before the State assumed its greater responsibilities. But Government departments are cumbersome organisations with a tendency to think in terms of statistics rather than of the human beings they are created to serve. No matter how comprehensive the regulations, how wise and far-seeing the administration, no State, as we know it, could ever hope to cater for all the human afflictions of mind, body or estate. There will always be the case not covered by regulations.

And so we make our appeal. We shall not try to draw your attention to individual charities by name—for that would be invidious—but will describe those whom they serve. All the organisations referred to in this article make their appeals in THE SOLICITORS' JOURNAL, and for your assistance we have compiled an alphabetical list of them which appears on pp. 822–823, *post*. They nearly all depend entirely on voluntary subscriptions. To them money has more than its usual value. It may mean the difference between extending a helping hand and having to turn away a deserving case. Which alternative it shall be depends on us. The voluntary workers are there to aid the helpless. They do not ask for praise. As the medical director of a voluntary hospital in the Middle East said in his report for last year: "Medical, scientific and ethical standards . . . come before material gain or prestige." If they have the necessary financial support they will carry on the good work.

There are organisations which cater for practically everyone who is in need of help—the blind, the deaf and dumb, the crippled, ex-servicemen, the clergy, the aged and infirm, unwanted children, distressed gentlefolk, lepers, epileptics, mental cases . . . we could go on for a very long time. Whichever cause attracts you or your client, you can be sure that your assistance will help those less fortunate than yourself.

As we read this article perhaps it would be fitting if we turned our thoughts to those who cannot see the printed word, which occupies so much of our lives. At the breakfast table and on the train to the office it is almost a ritual to read the morning's copy of *The Times*. At the office our attention is constantly engaged by words written, typed or printed, and going home there is, of course, the evening newspaper. After tea we relax with a book, play canasta, watch television or visit the cinema. All these everyday things are denied to those who cannot see. Nevertheless, the blind refuse to remain the docile prisoners of darkness. With the help of voluntary organisations they can now read and play cards. Many thousands of them belong to the library which lends them, free of charge, specially prepared books in braille. There are specially embossed playing cards which enable the unseeing to play their favourite games.

Training of the blind is an important work which is undertaken by voluntary societies. If you have a piano at home that needs tuning it is quite probable that you will employ a blind person who has been specially trained. There are also workshops for the blind, nursery schools for younger children and even a college that teaches boys and girls shorthand-typewriting. Training and aid is given to men and women who lost their sight in the service of their country during the two world wars. Perhaps these are the hardest cases of all.

The blind no longer seek pity. They try to live normal, independent lives and wish to earn their own living. But all their resolution, their cheerfulness and their perseverance can come to nothing if we ignore them. Institutions exist for the welfare of the blind and they give help in ways additional to those provided by public authorities. We can lighten the lives of the blind so easily by replenishing the funds of these organisations.

If you own a television set perhaps you have turned on the picture but not the sound. It is a strange experience under these conditions to watch, say, the political discussion "In the News," a group of speakers having an argument without emitting a sound. That is just a taste of what life can be to the deaf. Imagine walking past Orators' Corner at Hyde Park and not hearing the speakers, or crossing the road and being unable to hear the oncoming traffic. It is a cruel fate to have been born deaf but, only too often, those so handicapped are also dumb. Happily, there are associations which have been formed to look after these unfortunate people. You may have seen one of these institutions at work in the British film "Mandy," which was showing at local cinemas about three months ago. If you saw this film you will know something of the hard work and the endless patience that these organisations use in teaching young deaf children to talk and become useful, normal persons.

Amongst the other work of these organisations, some of which were founded by the deaf and dumb themselves, is the provision of weekly money grants to necessitous cases, Christmas gifts to those in mental hospitals and institutions, and grants towards the training of welfare workers. Lip-reading classes and social clubs are important features of these charities and one organisation maintains a hostel for deaf working boys in North London. Advice is freely given to the deaf on the purchase of hearing aids, and there is much research work undertaken. Help is needed for these charities to carry on their work amongst those whose handicap means a life of silence, isolation and loneliness.

The self-respect of the crippled is restored by doing useful work in the workshops and crippleages maintained by charity. Many crafts are taught, including chair-seating in cane and rush, basketry, rug making and artificial flower making. It is here that disabled persons are taught to overcome their handicaps and to become useful and happy citizens. Rates of pay are standard and out of their wages they contribute towards their keep. Unfortunately, that is not enough, and more money is needed to maintain the homes and workshops. For those unfortunate people who will never again be able to run, swim or even travel on the top deck of a bus, we should extend a helping hand.

Rheumatism is sometimes supposed to be a sign of old age. It is a common enough disorder and is not, in fact, confined

solely to the older generation, as some of you will probably agree. Yet it is surprising that, like the common cold, no effective cure has been discovered. The voluntary organisation conducting research into the causes and means of treatment of the painful and crippling rheumatic disorders is entirely dependent upon voluntary support and free from State control. To cancer, also, a faithful body of research workers have devoted their lives. To-day, armed with knowledge gained from systematic investigation in the laboratory, doctors are able to cure this dreaded disease in ever greater numbers. These two causes, together with the charities for the relief of cancer and the provision of surgical aid, must surely deserve earnest attention when considering a donation or bequest.

Most people will agree that the National Health Service is the greatest and most popular part of the Welfare State, with its provision of cheap medical treatment for all. It is not generally realised that the need for voluntary effort is as great as ever before. Many of the smaller hospitals, which cater for patients of special classes, such as educated women with limited means, are not controlled or supported by the State. Hospitals situated abroad for the benefit of British and Commonwealth residents and visitors are also dependent on voluntary aid. In the hospitals which have been taken over by the National Health Service, charitable organisations are now able to concentrate on providing those extras which the State cannot hope to give. In a recent Ministry of Health report it was noted that gifts and legacies to hospitals, which increased from £1,700,000 in 1949–50 to about £3,000,000 in 1950–51, "helped materially to provide all kinds of amenities and in some cases equipment and services which could not otherwise have been provided from restricted budgets." The funds are now devoting their resources to the development of those essential amenities of a modern hospital for which there is little prospect of a subsidy from the Exchequer. Homes are being provided for the aged sick, convalescent homes and a centre for dietetic training and catering are being established. In addition, staff colleges to give training to staff nurses, hospital administrators, etc., are overcoming the former lack of training facilities which was unavoidable in the days before the National Health Service. The steady march forward of medical knowledge is being maintained by charities which provide research scholarships and grants, purchase scientific equipment and maintain college laboratories and research centres. The expansion of the programme of surgical research and study should not be curtailed because of lack of funds.

In India, where there is only one nurse for every 43,000 people, the training of doctors, nurses, midwives and dispensers is in the hands of voluntary societies. The Indian Government has insisted that the standard of qualification must be raised, and has offered to meet half the cost of a new 500-bed hospital if charity can find the remainder. Near Mount Lebanon in Asia Minor there is a hospital, 450 feet above sea level, which cares for over 400 patients suffering from mental and nervous disorders. Founded on the initiative of a Swiss missionary, the hospital cares for people who, not so long ago, would have been chained and neglected in unseen places or taken to mountain caves to undergo "exorcism."

In this country, men and women whose lives are darkened and shut in by incurable disease are cared for, and those fortunate enough to be with friends or relatives are provided with life pensions, by charitable homes which need help to enable them to carry out their work of mercy. In South London there is a hostel whose object is to provide a home where men and women in the last stages of illness without homes or friends able to maintain them, may end their days in peace, carefully and tenderly nursed and surrounded by everything that can cheer them and alleviate their sufferings. Entirely dependent upon charity, this home should not be forgotten in the season of goodwill to all men.

Men and women disabled by reason of war injury, industrial accident, disease or congenital deformity are rehabilitated by a council whose primary object is the development of a unified rehabilitation service by means of a wide educational programme and the discussion of problems arising from disablement. Convalescent homes also, like the one in Surrey, supported by voluntary subscriptions, where members of the printing and kindred trades can recover from any illness, will receive donations with the utmost gratitude.

The high cost of living is a problem that affects us all, yet try to imagine how sorely it must afflict the aged who, in times gone by, were used to living in comfort and whose income is now sufficient only to provide them with the most meagre necessities. Organisations which provide relief and assistance to these distressed gentlefolk, ladies in reduced circumstances, retired governesses, the poor or simply the aged, depend solely upon gifts or legacies. So, too, does the society which provides wireless sets for the bedridden, enabling the house-bound who are too poor to buy a radio to keep in touch with the outside world of religion, music and entertainment.

There is a widespread misunderstanding of the present position of the many voluntary children's homes, orphanages and organisations caring for fatherless or motherless children. Despite all that the State is doing for these children who are deprived of a normal home life, the voluntary societies have been left free to carry on their work. They are providing homes for orphans, ill-treated children and victims of broken homes at an age when home life is so very important to these citizens of to-morrow.

It is too often for comfort that we read in the Press nowadays of cases of ill treatment or neglect of children. It has been advocated that harsher penalties should be inflicted on those found guilty of cruelty but, no matter how heavy the sentences or fines, the problem can best be met by independent organisations which protect those who cannot defend themselves. Family life can often be rebuilt by the patient advice and assistance given by trained workers.

In times of war, when the freedom of our country—and indeed the whole free world—is threatened, the personality of the moment is the serviceman. It is rather ironical that when peace is with us once more there is the tendency to forget him, save for the day in November when we honour the memory of our fallen comrades on the anniversary of the Armistice in 1918. It is not generally realised that there is a rather alarming number of disabled ex-servicemen and women who are cared for by the State, and that the welfare work for those in mental hospitals and curative homes is undertaken by voluntary organisations. There are also many benevolent funds to relieve the hardship of servicemen and their dependants. We owe much to the armed forces. We ought to try to repay some of that debt.

The fact that we live on a collection of islands has always linked us closely, as a nation, with the sea. It is not surprising, therefore, that there are many charities dealing with all aspects of sailors' welfare. For those who are proud to belong to a great maritime people, here is a worthy cause.

At this season of the year, when we recall an event that occurred nearly 2,000 years ago, it is fitting to note that there are numerous charities which are calling for financial assistance in order to spread the Word of God both in this country and throughout the world. The Bible is being introduced to peoples in Asia and Africa who only comparatively recently were taught to read and write. It has been translated into almost every known language and societies exist which undertake to distribute it in every land. The Bible, with its claims and its achievements as man's road to the knowledge of God and of His laws, is drawn into the centre of the spiritual conflict in the world. Missionaries are spreading the truth about Christianity in many lands in which, only a few years ago, the populations had never seen a white man or heard of our Lord. In a world torn with clashes between nations and racial groups it is significant that these missionaries, serving overseas in happy fellowship with people of many lands, are extending friendships across frontiers.

But we do not have to travel to far-away lands to see true Christianity at work. In the poorer districts of London, in our ports and in almost every town and city of this country there are missions dedicated to the social and spiritual uplift of those in need. The armies of Christian workers who are daily helping to restore confidence, and give hope, to those who need it most must surely deserve our gratitude. Let us also remember the clergymen and their dependants who, having given their service, are now too old or too ill to support themselves. Funds are urgently needed to meet the increasing number of cases of real distress amongst the clergy and their families.

So far we have looked at charities the objects of which have been the welfare of humanity. Some people believe that the worthiest causes of all are those concerned with the care of dumb animals. Who can deny that here is an ideal in the truest sense of the word " charity " ? The voluntary clinics and hospitals, which are equipped with modern scientific aids, give pets the best treatment possible, irrespective of whether their owners can afford to pay. The service of these clinics is not confined only to cats and dogs but extends to any kind of domestic pet. The skill of veterinary surgeons can only command admiration, for no animal can tell us whether or when it feels pain—it is only the skill of these voluntary workers that can relieve the sick pet.

Livestock is the concern of another charity which aims to improve the health of all animals and reduce mortality in order to increase production, while a rest home in the countryside of Hertfordshire provides a home for old horses. Kindness to animals is, of course, associated with the prevention of cruelty, and the work of the inspectors engaged in this noble cause is so well known that all that is necessary for us to do is to draw your attention to this society. Those who also desire to see experimentation on living animals curtailed or abolished will wish to make a contribution to one of the societies campaigning for the abolition of vivisection.

Throughout this article we have tried to describe the functions of the various charities which make their appeals in the columns of THE SOLICITORS' JOURNAL. You will have seen that the objects of these societies are as varied as life itself. No matter what your interests, or those of your client, we are confident that you will find something that appeals ; for instance, if one is a keen sportsman he may wish to subscribe to the society whose objects include the encouragement of life saving or the association which assists in providing playing fields for adolescent boys and girls, and playgrounds for small children ; perhaps, if one lives in the country, a subscription to the institution which provides for casualties in the agricultural community would be fitting ; funds are urgently needed to help others wishing to make good after a prison sentence ; these are but a few illustrations of the variety of charities in this country.

We make no attempt to disguise any of the charities in writing this appeal ; you can identify any organisation mentioned in this article by referring to our advertisement pages. That was our intention. There are many charitable institutions and they are all urgently in need of funds. We hope that this short notice of them may assist those people and their advisers who wish, at this season of the year, to make some small contribution to the happiness and welfare of those less fortunate than themselves.

Company Law and Practice

CHARITABLE OBJECTS

WHENEVER one receives instructions to prepare memorandum and articles of association for a company not having as an object the acquisition of gain by the company or its members, one important question which requires urgent consideration is whether the objects of the company are such that it might rank as a charity and thereby secure substantial taxation and other advantages.

In general, to secure such advantages it is necessary to show that the company is " established for charitable purposes only." For this purpose, however, the activities in which the company is actually engaged will be irrelevant, strange as that may seem, and the activities in which the company has power to engage are all important. Neither the documents preliminary to incorporation nor the action of the governing body after incorporation can properly be received in evidence for the purpose of determining what the objects of the company may be (*Bowman* v. *Secular Society, Ltd.* [1917] A.C. 406). The court is not concerned with the motives or ultimate aims of the founders, but is solely concerned with the meaning and effect of the language employed in the memorandum (*Keren Kayemeth le Jisroel, Ltd.* v. *I.R.C.* [1932] A.C. 650).

It is not the case that the objects must be so framed that the company has no power to engage in anything but charitable activities, but it is wise to assume this to be the case. Actually, however, if the main object or objects are solely charitable the mere fact that the company is given certain powers (even though described as objects) which are purely ancillary to the main objects will not prevent the company being regarded as " established for charitable purposes only," but tax exemption will in such a case be confined to such parts of its income as are applied to its strictly charitable purposes (*Oxford Group* v. *I.R.C.* [1949] 2 All E.R. 537).

It is obvious that the drafting of the memorandum of association for a charity is by no means easy. One ray of comfort is that, if the object and the means indicated are clearly charitable, then the court is not astute to look for possible, but subsidiary, non-charitable means which might be within the words used (*Re Strakosch ; Temperley* v. *A.-G.* [1949] Ch. 529).

The first approach to the problem must be to consider what comes within the word " charity." The legal definition is rather like the definition of " prospectus " ; neither definition is in fact very definite but nevertheless practitioners have a fairly clear idea of what is covered.

The legal meaning of " charity " differs considerably from its popular meaning. The man in the street would not

regard the provision of fives courts for a public school as a charitable purpose, but the law will (*Re Mariette* [1915] 2 Ch. 284). In general the legal meaning is far wider than the popular meaning, but on the other hand many purposes which popularly might be regarded as charitable are excluded by the law as not being of a public character.

It is said that charity begins at home, but, of course, that is bad law, for to be charitable the purpose must be of a public character. Charity cannot be confined to the home and need not be confined to or even include the home country. The relief of the poor of Xyzland is as good a charitable purpose as the relief of the poor of England.

The law of charity has been built up, not logically, but empirically (*Gilmour* v. *Coats* [1949] A.C. 426) and it is this empirical development which has so often baffled efforts to reduce the law to systematised definitions (*Oppenheim* v. *Tobacco Securities Trust Co., Ltd.* [1951] A.C. 297). The many decisions of the courts as to whether or not various purposes are charitable do not admit of convenient classification. Our old friend 43 Eliz. 1, c. 4, which once was regarded as a basis for the classification of charitable purposes, is not now of great assistance, because many purposes have been admitted as charitable which do not appear to have any real analogy with the charitable purposes listed in the statute. As good a definition as any for modern purposes is, perhaps, as follows:—

> "A purpose is *prima facie* charitable if it comes within one or more of the following four headings:—
>
> (*a*) The relief of aged, impotent or poor persons.
>
> (*b*) The advancement of education.
>
> (*c*) The advancement of religion.
>
> (*d*) Other purposes beneficial to the community not falling under any of the preceding heads but analogous to purposes mentioned in 43 Eliz. 1, c. 4, or to other purposes already admitted by the courts as being charitable."

Basically this definition is that of Lord Macnaghten in *Commissioners of Income Tax* v. *Pemsel* [1891] A.C. 583, but heading (*a*) has been expanded in view of cases mentioned below when considering that heading, and heading (*d*) has been revised on the lines indicated by Chitty, J., in *Re Foveaux* [1895] 2 Ch. 501.

It should be observed that such purposes are only *prima facie* charitable (*Re White* [1893] 2 Ch. 41). There are purposes which come within the four walls of the definition yet fail to be charitable.

The key phrase in the definition is "beneficial to the community." It is not right to assume that any purpose beneficial to the community is a charitable purpose, but it is true to say (except, perhaps, as regards the relief of poverty—discussed later) that no purpose which is not beneficial to the community can be in law a charitable purpose. "Community" does not necessarily imply the community as a whole and it will be sufficient if the purpose is beneficial to a class of persons at large who can properly be regarded as such a section of the community as to satisfy the test of public interest. Members of a family and employees of a particular employer are neither the community nor a section of the community because the nexus between them is their personal relationship to a single propositus or several propositi; therefore, in *Oppenheim* v. *Tobacco Securities Trust Co., Ltd., supra*, "providing for or assisting in providing for the education of children of employees or former employees of British-American Tobacco Co., Ltd." was held not to be a valid charitable trust.

Another ground upon which a purpose which is *prima facie* charitable may fail to be charitable is that it is contrary to public policy and therefore void. Thus, although the "relief or redemption of prisoners" is mentioned in 43 Eliz. 1, c. 4, as a charitable purpose, the payment of fines imposed upon motorists for exceeding the speed limit, although analogous, would, it seems, be void (compare *Thrupp* v. *Collett* (1858), 26 Beav. 125).

The attainment of political objects is not a charitable purpose. It may be that in a particular case purposes are laid down which are *prima facie* charitable, but this will not assist if the true purpose is the attainment of political objects (*Bonar Law Memorial Trust* v. *I.R.C.* (1933), 17 Tax Cas. 508; *Re Hopkinson, deceased* [1949] 1 All E.R. 346).

It should be noted that a purpose intended to benefit the community will not be held not to be charitable merely because there is controversy as to whether the result is in fact beneficial. There are quite a few examples of cases where gifts in aid of disputed doctrines have been held to be charitable.

The examples given above do not, of course, exhaust the grounds upon which *prima facie* charitable purposes may fail to be charitable, but they are reasonably representative. The next stage is to examine the four headings of the definition.

(*a*) *The relief of aged, impotent or poor persons.*—The relief of "aged, impotent and poor" people is expressly mentioned in 43 Eliz. 1, c. 4. It used to be thought that the relief of the aged was only a valid charitable purpose if the court came to the conclusion that the relief of poverty was intended to be an essential element (see *Re Lucas* [1922] 2 Ch. 52 and *Re Dudgeon* (1896), 74 L.T. 613). However, it now seems to be accepted that the words quoted in inverted commas above have to be read completely disjunctively and that the aged are proper objects of charity, even in the absence of poverty; similarly for the impotent (*Re Roadley* [1930] 1 Ch. 524; *Re Glyn* (1950), 66 T.L.R. (Pt. 2) 510; *Re Bradbury* [1951] 1 T.L.R. 130).

A gift for the benefit of the least well-off of a wealthy class could not be regarded as a gift to "poor relations," even if the donor so considered them. On the other hand, poverty does not imply destitution and is perhaps not unfairly paraphrased as "having to go short" in the ordinary acceptation of that term, due regard being had to status in life and so forth (*Re Coulthurst* [1951] Ch. 193).

The relief of poor relations is well established as a purpose which may be charitable; one might think that the purpose is of a private character and as such non-charitable, but it would seem that such a purpose is only regarded as of a private character if it is confined to statutory next of kin. It is clear that either the "poor relations" cases must be regarded as anomalous, or one must accept as an apparent illogicality that a class of beneficiaries can in poverty cases be regarded as a section of the community even though in other cases where the element of poverty is lacking the class would be regarded as of a private character. The present attitude of the Court of Appeal seems to be that in poverty cases a much narrower object may in them be considered to work a public benefit than in the other categories (*Gibson* v. *South American Stores, Ltd.* [1949] 2 All E.R. 985)—public benefit remains a necessity. The point was considered by the House of Lords in *Oppenheim* v. *Tobacco Securities Trust Co., Ltd., supra*, but, as this was not a poverty case, it was not found necessary to pronounce on the matter; probably, as hinted by Lord Simonds, the House of Lords would refuse to overrule cases which have stood for so long, relying upon

the *dictum* of Lord Wright that in general the House of Lords will overrule a long-established course of decisions in the courts below only in plain cases where serious inconvenience or injustice would result from perpetuating an erroneous construction or ruling of law (*Admiralty Commissioners* v. *Valverda* (*Owners*) [1938] 1 A.C. 173).

It is possible to find logic in the differentiation between poverty cases and others, if it is remembered that in the past one thing to which the poor could lay claim was parish relief, and that therefore the relief of the poor by other means conferred a benefit not only on those relieved, but also on the parish or parishes which otherwise would have had to bear the burden of the relief. Accepting this basis it would be necessary to exclude from the ambit of charity only cases where the purpose was purely private in character, as would be presumed if the benefit were confined to next of kin. However, if this is the reason, no trace of it emerges and in these days of the Welfare State this sort of argument might lead one too far.

(*b*) *The advancement of education.*—Education is not confined to the normal subjects taught in schools, and in any case purposes not themselves directly educational may promote and be intended to promote the advancement of education. A good idea of the scope of this heading is given by the following examples :—

(i) The development of the drama and the art of acting (*Re Shakespeare Memorial Trust* [1923] 2 Ch. 398).

(ii) The promotion of knowledge of the Irish language (*A.-G.* v. *Flood* (1816), Hayes & Jarman, App. xxi).

(iii) The advancement and propagation of education in economic and sanitary science (*Re Berridge* (1890), 63 L.T. 470).

(iv) The provision of prizes for athletic sports in schools (*Re Mariette*, *supra*).

(v) The promotion of self-control, elocution, oratory, deportment, and the arts of social intercourse, and of public, private, professional and business life (*Re Shaw's Will Trusts* [1951] 2 T.L.R. 1249).

The last example indicates particularly well that education and analogous purposes cover a very wide field.

(*c*) *The advancement of religion.*—The advancement of religion means the promotion of the spiritual teachings of a religious body and the maintenance of the spirit of the doctrines and observances on which it rests and in which it finds expression (*Oxford Group* v. *I.R.C.*, *supra*). The religion to be advanced need not be that of the Established Church, nor need it be a Christian religion, so long as it is not atheistic. Any religion qualifies provided that it is not "subversive of all religion and morality" (*Thornton* v. *Howe* (1862), 31 Beav. 14). Thus the promotion of the Jewish religion as a charitable purpose (*Straus* v. *Goldsmid* (1837), 8 Sim. 614), although the political restoration of the Jews to Jerusalem, despite its religious basis, had to be held void as being a political object.

The mere fact that an object is of a religious nature does not mean that it is charitable. To be charitable the object must either involve the religious instruction of the community or a section of the community or must otherwise contribute to the advancement of religion ; on this basis the advancement of an association of strictly cloistered and purely contemplative nuns was held not to be a charitable purpose since it could not be shown to have any public utility (*Gilmour* v. *Coats* [1949] A.C. 426), notwithstanding that such activities were regarded in the belief and teaching of the Roman Catholic Church as causing the intervention of God to bring about the spiritual improvement of members of the public (both Catholic and non-Catholic).

(*d*) *Other charitable purposes.*—It is not correct to say that all purposes for the benefit of the community are charitable. "Benevolent," "philanthropic" or "patriotic" objects are not as such charitable ; remember the phrase "charitable *or* benevolent" in the will of the late Caleb Diplock which caused such a wealth of litigation.

It is not possible to give any convenient classification of the purposes coming under this heading. It may, however, be helpful to list some purposes, not obviously charitable, which have been held or stated to rank as charitable :—

(i) The publication of a dictionary (*Re Stanford* [1924] 1 Ch. 73).

(ii) The promotion of good housekeeping (*Re Pleasants* (1922), 39 T.L.R. 675).

(iii) The provision of a library for an officers' mess (*Re Good* [1905] 2 Ch. 60).

(iv) The spread of vegetarianism (*Armstrong* v. *Reeves* (1890), 25 L.R. Ir. 325).

(v) Teaching the shooting of rifles at moveable objects (*Re Stephens* (1892), 8 T.L.R. 792).

Revenons à nos moutons. Whenever a body is to be formed otherwise than for profit it is likely to have for its main object something of a public nature and in many cases it will be found that careful wording will produce charitable objects which nevertheless permit all the activities which are contemplated. It is thought that there are quite a number of companies which, having regard to their activities, could rank as charitable, but do not because the point was not considered, and accordingly wide objects were laid down.

In drafting the objects clause for a company, the modern practice is to include numerous and wide independent objects enabling the company to do almost anything. In drafting the objects clause for a company intended to rank as a charity it is wise to keep the objects clause pretty short, since one wrong word can ruin everything. "Or" instead of "and" can be enough to change the whole position.

A company has power to do whatever it is necessary to do with a view to the attainment of its objects and whatever else may fairly be regarded as incidental or conducive thereto. It is true that, wide as this power may seem, experience does show that there may be many things which seem desirable or convenient but may be *ultra vires* if wide objects are not laid down ; however, if they are outside the powers of the company, they cannot be really necessary for the attainment of its objects. It is right that a charity should be restricted in its powers, and a short objects clause of a few lines will often be found sufficient to cover all that is reasonably required. The short objects clause in Table C is quite sufficient to enable a school to be operated quite satisfactorily without finding any reasonable school activity to be barred as *ultra vires*.

It is not suggested that the objects clause of a charity must be, or ought wisely to be, confined to a single object of a few lines in length. It is suggested, however, that often this will suffice, and in any case it is desirable to avoid a multiplicity of objects. The memorandum should make completely clear what the main objects are and, if other objects (so called) or powers are included, it must be made clear that these are purely ancillary to the main objects.

As a model for the memorandum, the use is recommended of the specimen memorandum set out in the notes issued by the Board of Trade as regards procedure in cases of application for a licence under s. 19 of the Companies Act, 1948. It is interesting to see that the note against the objects clause is, "Here express objects shortly."

It is very desirable that counsel specialising in such matters should be asked to settle the memorandum of association of any intended company which is to be established for charitable purposes. Funds may be scarce, but the fees payable do represent money well spent; the advantages of being a charity justify expense to make sure that all should be well. Counsel cannot, of course, guarantee that his views as to the law coincide with those of the Inland Revenue. In cases of this nature, however, the Inland Revenue are usually willing, if shown the draft memorandum, to indicate whether or not they would be disposed to regard the company as a charity, and experience shows that, having given a favourable indication, they are most unlikely to go back on this unless the company indulges in non-charitable activities or unless a decision of the courts necessitates them doing so. Except in the clearest cases it is suggested that an approach to the Inland Revenue should be an invariable rule; the appropriate person to approach is the Chief Inspector (Claims), but it may be thought preferable to deal with the matter through the local inspector of taxes.

J. W. M.

Taxation

CHARITABLE GIFTS AND TAXATION

THERE are many ways in which a donor may choose to benefit a charity. If he thinks about the matter at all seriously he will wish to proceed in such a manner that the benefit enjoyed by the charity is at least equal to, or if possible greater than, the net out-of-pocket expense to himself, or, if the donation is a considerable one, to himself and his legatees and devisees regarded collectively. Now it is clear that if, as a result of the donation, the donor's liability to pay income tax or sur-tax is reduced, or if the liability of his estate to pay estate duty is reduced, then the net cost is diminished whilst the benefit taken by the charity remains the same.

If a donor gives no thought at all to the matter he will doubtless subscribe from time to time, out of taxed income, to such charities as attract him and may bequeath legacies to the same or other charities on his death. Or he may do the one without the other. By so doing his liability to tax and his estate's liability to duty are left unchanged. It is proposed here to examine first the fiscal consequences of gifts by will, gifts *inter vivos* and annual subscriptions, and second to show how the position may be bettered by adopting one form or other of covenant or settlement.

GIFTS BY WILL

It is obvious that a gift made by will cannot affect the testator's income tax or sur-tax position: it is equally obvious that it will be paid out of an estate after that estate has borne estate duty. Thus, if a man worth £100,000 should leave a tithe of his substance to charity, his residuary legatees will find that the tithe has, in effect, become almost two tithes. It is, however, proper to mention that there is a statutory exception in favour of that most admirable institution, the National Trust.

By the Finance Act, 1931, s. 40, it is provided that where an estate or interest in land is without reservation bequeathed to the National Trust, the Treasury may remit any duties leviable upon that land on the death of the testator and, furthermore, that such land shall not be aggregated with the rest of the estate to fix the rate of duty. The Finance Act, 1937, s. 31, extends this provision and is also appropriate to settlements *inter vivos*: this aspect will be discussed below. For our present purpose the effect of the 1937 Act is very briefly to provide that where the testator bequeaths a life interest in the property to his spouse or his child then no duty will be payable upon the death of the life-tenant. There are various consequential provisions that may be studied in detail when a gift of this type is actually contemplated. The Finance Act, 1949, s. 31, provides, again in outline, that where a maintenance fund is settled to devolve with land which is left to the National Trust within the scope of the 1937 Act, that fund will enjoy similar privileges. The fund must not exceed the amount sufficient to provide from its income for the upkeep of the land concerned.

ABSOLUTE GIFT INTER VIVOS

If a donor makes an absolute gift to a charity during his lifetime he not only enjoys the gratitude of those concerned during his life but also achieves certain fiscal saving. It is clear that, since the property is no longer his he is no longer liable to pay income tax or sur-tax upon the income arising therefrom. Furthermore, if he survives for one year (not five, as in the case of non-charitable gifts), and if the charity has *bona fide* assumed possession and enjoyment immediately on the gift and thenceforth retained them to the entire exclusion of the deceased or of any benefit to him by contract or otherwise, then no estate duty will be payable upon the gift at his death. Indeed, if the total gifts to that particular donee within one year before the death do not exceed £500, no estate duty will be payable thereon despite the donor's untimely death.

The requirement that the donor must not by contract or otherwise reserve to himself any benefit is too well known to need discussion here, but it may be useful to observe that in this case also there is an exception in favour of the National Trust. This again arises under the Finance Act, 1937, s. 31, and makes it possible for a donor to give land to the National Trust, reserving thereout a life interest either to himself or to his spouse or child. If he reserves a life interest to himself, then on his death no duty will be payable if the interest in the land has, within six months of that death, been so dealt with as to be held by the National Trust inalienably. The period of six months may, in a proper case, be extended. Where the donor gives a life interest in the land to his spouse or child, then no duty is payable on the death of that spouse or child. If the donor survives for five years no duty will be payable on his death either, for he has divested himself of all his interest: if he does not so survive, then it seems that duty would be payable on the then value of the spouse's or child's life interest.

It will be seen that, for purely fiscal considerations, an outright gift *inter vivos* is the best "value for money." It is, however, not popular for many reasons. It is obviously not attractive to the man who enjoys a large earned income but has little capital, nor to the man who, whilst his own capital is sufficient during his lifetime, feels that it will be hardly sufficient for his dependants after his death. Furthermore, a donor likes to retain some control over his benefactions for as long as possible—there is something disconcertingly final about making an absolute gift of a considerable sum. It will be suggested below that most of these drawbacks can be surmounted by a properly devised form of settlement.

ANNUAL SUBSCRIPTIONS

If a fairly wealthy man is in the habit of distributing, say, £100 per annum among various charities and proceeds in the simplest possible manner by writing cheques in their favour

from time to time, he may well receive an unwelcome surprise if he stops to consider how much they cost him in terms of gross income. There is a well-authenticated story of a millionaire who, when a waiter received a tip of 1s. with no apparent enthusiasm, reminded him that it cost its donor £2. In short, this procedure does nothing to reduce the donor's liability to income tax or sur-tax. Nor does it do anything to affect the liability to estate duty except, of course, in so far as, had the donor not given it away but saved it, it would have borne duty.

Generally, subscriptions of this sort may be ignored so far as concerns any possible liability to estate duty as gifts *inter vivos*. If the gifts to any one charity in the year preceding the death do not exceed £100 they will be exempt under the Finance (1909–10) Act, 1910, and if they do not exceed £500 they will almost invariably be exempt under the Finance Act, 1949, s. 33. If they do exceed the latter sum it will be necessary to show that they were the normal expenditure of the deceased and that they were reasonable. As to the first, it is not necessary to show that the deceased was in the habit of making gifts of that magnitude to the particular charity or charities concerned: it is sufficient to show that it was his habit to make comparable gifts to charities generally. Curiously it is often easier in practice to bring within this exemption monthly gifts of £5 than annual gifts of £50. The test of reasonableness is generally satisfied if it be shown that the deceased retained sufficient income to maintain him in a normal mode of living having regard to his position in the world.

Covenants to Pay Income

In favour of a named charity

The simplest form of covenant, and one that is very well known, is that in which the donor covenants with a particular charitable institution that he will pay to it a regular annual sum out of his taxed income, leaving it to the charity to reclaim income tax thereon, thus increasing the value of his gift. For example, he may covenant to pay £10 per annum. The charity, in round figures, regards this as a payment of £19 less tax at 9s. 6d. in the £, and recovers the extra £9 from the Crown. Of course, as a mere matter of arithmetic, a donor who wishes to give £10 per annum to a charity would covenant to pay £5 5s. per annum, leaving the charity to recover from the Crown tax on £10, that is £4 15s.

Prior to the Finance Act, 1946, s. 28 (now the Income Tax Act, 1952, s. 415), a covenant of this sort operated to divest the donor of the income for all purposes. Thus, a very rich man enjoying a gross income of over £20,000 per annum could make annual subscriptions at a cost, as it were, of 6d. in the £. Now, however, where there is a covenant to pay income to a charity, that income is deemed to remain the income of the donor for the purposes of sur-tax, but not, be it noted, for the purposes of income tax.

The effect is that a person who wishes to give £50 per annum to a charity for a period of not less than six years (if he lives so long) can, by entering into a covenant, save £23 15s. on his income tax, assuming the present rates to continue. The only effect of the Income Tax Act, 1952, s. 415, is that he cannot in addition save anything up to £25 on his sur-tax. This is a considerable saving and it is therefore proposed to examine in detail the methods which should be adopted to effect it.

The Income Tax Act, 1952, s. 392, provides in brief that " . . . any income which is payable to . . . any other persons . . . . for a period which cannot exceed six years . . . shall be deemed to be the income of the person, if living, by whom the disposition was made . . . " That is to say that to be effective for its purpose the covenant must not be for a period which cannot exceed six years. This is not the same as saying that it must be one which does exceed six years: provided that there is a possibility at its inception that the period will be greater than six years, all is well. It will, therefore, be in order to covenant for six years or more if the donor shall so long live and, indeed, this form should always be adopted. If it is not, not only will the donor's personal representatives have to continue the payments after his death, but the liability to make those payments will not be deductible for estate duty purposes, since it has not been incurred for consideration, etc.

An interesting example of the same principle is to be found in *I.R.C.* v. *Black* (1941), 23 Tax Cas. 715, where the annual payment was to be a fixed proportion of a varying income but was to be limited to £10,000 in all. The period was one which would have exceeded six years if it had been necessary, but in the events which happened the limit of £10,000 was reached after two years only. It was held that the covenant was effective and was not caught by the predecessor of s. 392.

One warning may usefully be given: no attempt should be made to back-date the payments under the covenant. In *I.R.C.* v. *Trustees of the Hostel of St. Luke* (1929), 46 T.L.R. 580, a deed of covenant was executed on 3rd February, 1927, for seven years from 6th April, 1926, the first payment to be made on 31st December, 1926, and subsequent payments on 31st December each year. The first payment was in fact made on 4th February, 1927. It was held that the obligation did not arise until the deed was executed on 3rd February, 1927, and that it ceased when the last payment was made on 31st December, 1932: that period was less than six years and so s. 392 would apply.

If care be taken in the drafting there is no reason why the amount payable should not be a variable one (see *I.R.C.* v. *Black, supra; I.R.C.* v. *Payton* (1941), 23 Tax Cas. 722). Thus, a donor might, if he were so minded, covenant to give a constant proportion of his income to charity.

In favour of trustees

Many intending donors are reluctant to commit themselves in the way discussed above. Thus, they may be ready and willing enough to give, say, £50 per annum to one charity or another for the rest of their lives (or they may, without being ready and willing, realise that, having regard to their social and business interests, they will not be able to avoid doing so!) but may cavil at fixing their annual subscriptions to individual charities in advance. They feel that they may wish to vary the recipients as their interests change or as new and deserving causes are brought to their notice. The writer feels that it is not as widely known as it might be that the wishes of this type of donor can be met by a suitably drafted covenant.

By this method, instead of covenanting with a named charity to pay to it an annual sum, leaving it to recover tax upon it, the donor covenants with trustees to pay to them a fixed sum, monthly, quarterly or annually, to be held upon the trusts declared in the deed of covenant which is executed by the trustees as well as by the donor. The trusts are simply to pay the trust funds to such charity or charities in such amounts as the donor from time to time directs. Now it is essential, if the scheme is to succeed, that the covenanted sum should in fact be paid to charities during each fiscal year: the Crown, however, is very reasonable about this and is satisfied if any balance remaining unapplied on the 5th April of any year is in fact applied within a reasonable time thereafter. It is usual to provide that, if and so far as the donor shall not by, say, 15th May each year have exhausted the funds by directions to pay to specific charities, the trustees

shall on that date, without further instructions, pay such unappointed sum to a named charity or charities.

The scheme works like this. The donor pays, say, £25 to the trustees on each quarter day. He then, from time to time, directs them to pay a guinea here or five guineas there. If at the end of the fiscal year he has not exhausted the £100, he still has about six weeks in which to do so: if he does not do so, the trustee pays the balance to the named "residuary" charity. Finally, the trustee recovers income tax at the standard rate on the £100—at present rates £47 10s.—and pays it back to the donor. Frequently, one of the trust corporations is appointed trustee and in such a case the donor is usually supplied with a book of orders—similar in appearance to a cheque book—and he sends such an order to his selected charity who will be paid the nominated sum on its presentation to the trustee. The corporation's fee is usually a small percentage upon the annual sum covenanted to be paid and a considerably larger one on the amount of income tax recovered.

Settlements of Capital

The Income Tax Act, 1952, s. 415, whilst it operates to make covenants to pay income ineffective for sur-tax purposes, does not apply to income derived from property of which the donor has divested himself absolutely (subs. (1) (*d*)). Therefore, if a man with an income of £20,000 per annum, instead of covenanting to pay £50 per annum, settles £2,000 of 2½ per cent. Consols in such a way as to divest himself of all interest in them and so that the income arising therefrom is payable to charity, the net cost to himself by way of income is reduced from £26 5s. per annum to £1 5s. per annum, and a similar but lesser reduction in cost is obtained by less wealthy sur-tax payers. Of course, he has divested himself of capital but that aspect will be considered after examining the requirements which have to be met to ensure that the sur-tax is saved.

It has been said that the donor must have divested himself of the capital from which the income is derived. That conception is elaborated in subs. (2), from which it is apparent that, with certain exceptions, the settlement will not be effective for its purpose if there is the slightest possible chance that the property or any income therefrom may at any time in the future be paid to or applied for the benefit of the donor. That is, it is enough that there should be some remote chance of a resulting trust for the donor. The exceptions cover cases where the donor may take a benefit only by reason of—

the bankruptcy of a beneficiary;
the forfeiture of the interest of a beneficiary;
the death under the age of twenty-five years, or some lesser age, of some person who would be beneficially entitled upon attaining that age.

If, therefore, the settlement is such that the donor can only take a benefit under it in one of those circumstances, both income tax and sur-tax will be saved. So far as they are concerned there is no reason at all why the donor should not retain control of the distribution of the income among charities and so he may direct its application just as in the case of a covenant to pay income to trustees.

Now what of the liability for estate duty and what of the ultimate distribution of capital? Consider first the case of the donor who is quite content that the capital should ultimately go to charity but who wishes to control the destination of the funds during his life. In this type of case he should consider settling the funds upon trust to apply the income and capital thereof for charitable purposes so that the mode of application and appropriation of the trust fund is to be vested in the trustees, of whom he will himself be one, but, during his lifetime, with the consent and approval of the donor. In such a case, if he survives for one year, no estate duty will be payable on the settled funds on his death. His power of direction is not a general power of appointment so that he can be said to be competent to dispose of the property within the Finance Act, 1894, s. 2 (1) (*a*); nor is it a reservation of a benefit so as to make the settled funds liable as a gift *inter vivos*; nor is the cessation of the donor's powers a passing of the funds under the principle of *Burrell & Kinnaird* v. *A.-G.* [1937] A.C. 226. (See, as to these last two points, *Commissioner of Stamp Duties of New South Wales* v. *Way and Others* [1952] 1 All E.R. 198.)

If that type of settlement be adopted, it will work in this way. During the lifetime of the donor he can dispose of the income among such charities and in such amounts as he desires and can also apply part of the whole of the capital to charities from time to time. On his death the surviving trustees may continue in the same way, but will no doubt in practice wind up the trust by applying the capital to charities. There is no reason why the donor should not intimate to the other trustees his wishes as to the ultimate distribution, and whilst they would be in no sense bound by those wishes they would no doubt respect them. What is, of course, most important is that no attempt should be made in the settlement to provide that the capital should become distributable on the death of the donor. From the estate duty viewpoint that would be fatal. In short, a settlement of this sort has all the advantages of an absolute gift *inter vivos* and in addition the donor retains control during his life.

A more difficult case arises where the donor wishes to save both income tax and sur-tax but does not desire the capital of the settlement to pass to charity. This is really the case of the man, mentioned above, who has ample means for himself but who fears that the provision he can make for his dependants on his death will not be so ample. What he really desires is that the property be settled on trusts to pay the income therefrom to charity during his life and after his death to hold the capital as he may appoint. It would be too much to expect that both tax and duty could be avoided in this manner but, in many cases, a surprisingly large measure of relief can be obtained.

Consider first the man with an earned income of £20,000 per annum but with a comparatively small personal fortune of £50,000. He knows that he will contribute, say, £100 per annum to charities during his life, but he is not disposed to give any of his capital to charities on his death. Obviously income tax and sur-tax are of primary importance and estate duty only of secondary importance. Let him convey £4,000 of 2½ per cent. Consols to trustees, of which he will be one, upon trust during the life of the donor to pay the income to charities so that the mode of its application and appropriation shall be vested in the trustees but with his consent and approval, and after the death of the donor upon trust as to the capital and income for his wife for life and subject thereto for such of his issue in such shares, etc., as he shall by will appoint, and, in default of appointment, for those of his children who attain twenty-five. Now, providing that he has issue alive at the date of the settlement, the donor can only obtain a benefit by way of resulting trust if all the issue die before attaining the age of twenty-five, and this is provided for by the Income Tax Act, 1952, s. 415 (2) (*d*). Hence the settlement is effective for income tax and sur-tax purposes. If when the settlement was made the donor had no such issue, then it would not be effective because in that circumstance the donor would obtain a benefit by way of resulting trusts, not as a result of the death of a prospective beneficiary under

(*continued on p. 827*)

THE LOCALITY CASES IN THE LAW OF CHARITY

THE present Lord Chancellor, addressing the House of Lords in the case of *Sir H. J. Williams' Trust* v. *Inland Revenue Commissioners* (1947), 176 L.T. 462, referred to two propositions which, he said, must ever be borne in mind in any case in which the question is whether a trust is charitable. "The first is that it is still the general law that a trust is not charitable and entitled to the privileges which charity confers, unless it is within the spirit and intendment of the preamble to the Statute of Elizabeth (43 Eliz. 1, c. 4), which is expressly preserved by s. 13 (2) of the Mortmain and Charitable Uses Act, 1888." The second proposition is that the inclusion, as the fourth head of the classification of charitable purposes adopted by Lord Macnaghten in *Pemsel's* case [1891] A.C. 531, at p. 583, of "other purposes beneficial to the community" does not mean that every object of public general utility must necessarily be a charity. The trust must be beneficial to the community in a way which the law regards as charitable.

The general truth of Lord Simonds' two propositions is as clearly established as anything in the law of charity. For instance, philanthropy may be taken to be beneficial to the community, but a bequest for philanthropic purposes is not charitable (*Re MacDuff* [1896] 2 Ch. 451). A gift "for parish work" is a public gift, but is too widely expressed to be admitted to charity status (*Farley* v. *Westminster Bank, Ltd.* [1939] A.C. 430). To aim at strengthening bonds of unity within the British Commonwealth and at appeasing racial feelings is manifestly an aspiration to benefit the community. A bequest for this purpose is nevertheless not charitable (*Re Strakosch* [1949] Ch. 529). Lord Macnaghten's fourth head is a convenient label for a sub-division of charitable purposes, not a definition.

Yet there are cases of incontrovertible authority which give the impression of having been decided in contradiction of Lord Simonds' propositions, cases in which the element of benefit to the community has been treated as franking gifts or grants as charitable without inquiry into the nature of the benefit or the purpose of the benefaction. The purpose of this article is to set out two or three of these cases and to discuss the extent to which they are reconcilable with the supremacy of the spirit and intendment of the Elizabethan preamble.

The first case is *Goodman and Another* v. *Mayor of Saltash* (1882), 7 App. Cas. 633, a common-law action of trespass. It was brought by the mayor and burgesses of the ancient Cornish borough of Saltash, formerly called Essa, against two of the inhabitants of ancient tenements within the borough, the corporation alleging the infringement of its right, acquired by charter and prescription, to an oyster fishery in parts of the River Tamar and its tributaries. The defendants claimed that the free inhabitants of the borough's ancient tenements had exercised as of right the privilege of dredging for oysters in the *locus in quo* between Candlemas and Easter in each year and of catching and carrying them away without stint, for sale and otherwise. The defendants maintained that the corporation's right was subject to this usage in their favour. The points of law arising were propounded to the court by means of a special case, and after the Common Pleas Division and the Court of Appeal (by a majority) had found in favour of the corporation, the dispute was twice argued before the House of Lords. The corporation's title to the general oyster-fishing rights was treated as established, and it became the question whether the usage claimed by the defendants could exist consistently with that title. The tenor of all five speeches to the House was that a lawful origin for the usage ought to be presumed if reasonably possible in law. None of the learned lords who formed the majority (Lord Blackburn alone dissented) saw any reason why the grant or presumed grant to the corporation should not be presumed to be subject to a trust by way of exception in favour of the "free inhabitants of ancient tenements"; and, for this purpose, both Lord Selborne and Lord Cairns thought it necessary to show that such an exception was not obnoxious to the rule against perpetuities. It was in that context that they introduced the reference to a public or charitable trust which has led to the decision being cited so frequently.

Lord Selborne said: "A gift subject to a condition in trust for the benefit of the inhabitants of a parish or town, or of any particular class of such inhabitants, is a charitable trust." The usage would, therefore, not be void for perpetuity and could be sustained.

Now it is indisputable that, concurrently with the principles referred to at the beginning of this article, there is a requirement that every charitable trust must be of a public and not of a private character. In the words of Lord Wrenbury, "a first inquiry must be whether it is public—whether it is for the benefit of the community or of an appreciably important class of the community" (*Verge* v. *Somerville* [1924] A.C. 496, at p. 499). For this purpose, unlike the relatives or descendants of a named individual (*Re Compton* [1945] Ch. 123), or the employees of a company, however numerous (*Oppenheim* v. *Tobacco Securities Trust Co., Ltd.* [1951] A.C. 297), there is now no doubt that the inhabitants of a particular district constitute a sufficient section of the community. This seems to be the point to which Lord Selborne is directing his attention in the passage cited. The fact that the trust benefited a defined class of the inhabitants of Saltash made it possible to say that it was not a private trust. On this topic, Lord Simonds says, in the *Oppenheim* case: "these words 'section of the community' have no special sanctity, but they conveniently indicate first, that the possible (I emphasise the word 'possible') beneficiaries must not be numerically negligible, and secondly, that the quality which distinguishes them from the other members of the community, so that they form by themselves a section of it, must be a quality which does not depend on their relationship to a particular individual." A particular class of the inhabitants of a parish or town certainly fulfils these conditions.

What may seem remarkable, in the light of other authorities of equal standing, including the *Williams* case which we shall detail presently, is that no member of the House of Lords in *Goodman* v. *Mayor of Saltash* felt it necessary, before the exception in favour of this section of the community was held to be charitable, to inquire into the purpose behind the exception in order to see whether its nature was conformable with the concept of charity in law. A legitimate inference from the *Goodman* decision, if it stood alone in the case law of charity, might be that *any* benefit to the inhabitants of a district, given for whatever purpose, is sufficient to make the benefaction a charity. That this is not universally so will appear later.

The *Saltash* case was followed a few years later by another decision of which the subject-matter was unusual for a charity case. In *Re Christchurch Inclosure Act* (1888), 38 Ch. D. 520, purchase-money on the compulsory acquisition of land for a railway was paid into court and the question arose: Who was entitled to it? The land was part of a turf common

which had been allotted by commissioners acting under an Act of Parliament to the lords of the constituent manors in trust for the occupiers of certain cottages on whom the Act conferred rights of turbary. The court arrived at an apportionment of the purchase-money between the lords of the manors and the occupiers of the cottages. Thus far, no question of charity was involved; nor was it necessary, in this instance, to consider any such question for the purpose of escaping the effect of the perpetuity rule, for the trust was created by statute, and could not be void on any ground whatever.

But Lindley, L.J., observed that such a trust, unless it were charitable, would be of an anomalous character and difficult to effectuate fully in all circumstances, for instance, in the case of the destruction of some of the cottages. Although it was competent for the Legislature to create novel trusts, it ought to be presumed, if to do so were equally consistent with the object and words of the statute, that a trust of a kind with which lawyers are familiar was intended, and one which would give no difficulty in execution. The court was able to regard the trust as a charitable one in view of the decision in *Goodman* v. *Mayor of Saltash*, which was regarded as directly in point.

It may be noticed without disrespect that, in both the *Saltash* and *Christchurch* cases, the law lords and judges were striving towards a particular conclusion. In the former, the House thought that the usage ought to be upheld if possible, and a finding that it amounted to a charitable trust was essential to this end. The Court of Appeal in the later case was similarly inclined, as the words of Lindley, L.J., show, to hold the trust to be charitable if at all possible. Indeed, it seems that the court would have felt some difficulty on the point had it not been for the existence of the earlier decision. There was possibly a note of surprise in the voice of Lindley, L.J., as he remarked that the Saltash Trust was for the benefit of rich as well as poor, and was for some only of the local inhabitants. True, he derived some comfort in regard to the case before him in certain indications in the Act of Parliament of poverty in the original occupiers of the cottages on the turf common. We again emphasise that no such considerations are mentioned in the speeches in *Goodman* v. *Mayor of Saltash*, though the earlier cases cited by Lord Selborne were gifts in favour of parishes, a city and a county for community purposes, such as water supply, or the preservation of the peace. The use of the oyster fishery was apparently a commercial matter. Providing stock-in-trade for fishermen in the district seems well away from the spirit of the Elizabethan statute.

However, *Goodman's* case is incontrovertible law. The learned editors of Tudor on Charities characterise it as anomalous. They observe, in a passage which has more than once been quoted in the courts, that logically it involves the proposition "that purposes which are not charitable in the world at large are charitable if their operation is confined to a specified locality" (5th ed., p. 45). But this passage was written before the cases of *Re Smith* [1932] 1 Ch. 153, *Williams' Trustees*, *supra*, and *Re Strakosch*, *supra*, which at least narrow the scope of the anomaly.

Now for some cases which illustrate the limitations of the *Saltash* and *Christchurch* decisions. First, there is *Houston* v. *Burns* [1918] A.C. 337. The gift was for "public, benevolent or charitable purposes in connection with the parish of Lesmahagow or the neighbourhood," and, as a matter of construction, it was held that "public" must import a real alternative to "charitable." The contention was then considered that the limitation of the purpose to a particular locality was sufficient to validate the gift. The House rejected this contention. Neither the *Saltash* nor the *Christchurch* case was cited.

Another refutation of the validity of the locality badge as an unchallengeable passport to charity status is to be found in *Sir H. J. Williams' Trust* v. *Inland Revenue Commissioners*, *supra*, in which the question concerned certain property held by the trustees under a deed executed for various purposes of an educational, social and recreative character for the benefit of Welsh people resident in or near or visiting London. The House did not in fact accept that the beneficiaries were necessarily a sufficiently defined section of the community to constitute the trust one of a public character, but Lord Simonds, in addition to enunciating the broad and ever-important propositions cited at the beginning of this article, noticed a group of contentions of the appellants that the trusts were charitable because the purposes were beneficial to the community or sections of it, defined in several ways, all involving geographical or territorial considerations. His lordship remarked that, in these contentions, the charitable character of the purpose was asserted *because* it was said to be beneficial to the community or a section of it and for no other reason. It was not alleged that the trust was for the benefit of the community in a way which the law regarded as charitable.

To demonstrate the fallacy of this approach, Lord Simonds referred to the Privy Council case of *Dunne* v. *Byrne* [1912] A.C. 407, where the question was as to the validity of a gift to be used as the Archbishop of Brisbane should judge most conducive to the good of religion in a named diocese. Lord Simonds asked: "What could have been easier than to say that such a trust was beneficial to the community and, moreover, to a section of the community sufficiently defined by a reference to the diocese, and was, therefore, charitable?" The Judicial Committee negatived the charitable nature of the bequest because its terms were not identical with religious purposes—in other words, because it was not within the spirit of the preamble.

We must now notice the decision of the Court of Appeal in *Re Smith*, *supra*, for, in the judgments in that case, both the *Goodman* and *Christchurch* cases and *Houston* v. *Burns* were cited. Indeed, Vaisey, J., later (*Re Baynes* [1944] 2 All E.R. 597) described as a process of subtle reasoning for which he could only express his humble admiration, the means by which the Court of Appeal contrived to reconcile the two lines of authority. The residuary gift in *Re Smith* was "unto my country England for . . . own use and benefit absolutely," the use of a printed form imperfectly filled in, apparently, accounting for the blank. The court held it a good charitable gift, and that it ought to be applied under the sign manual.

In his judgment, Lord Hanworth, M.R., pointed out that in *Houston* v. *Burns; Blair* v. *Duncan* [1902] A.C. 37; *Re Macduff* [1896] 2 Ch. 451 and *A.-G.* v. *National Provincial Bank* [1924] A.C. 262, cases relied on in support of the proposition that the gift to "my country England" failed for uncertainty, words such as "public, benevolent or charitable purposes" had been construed disjunctively as alternatives. In that class of case the mere use of the word "charitable" cannot prevent a construction in favour of some objects which are not charitable. It is an instance of the now familiar ambiguity which was responsible for the whole of the *Diplock* litigation; and the difficulty arising from the use of specific, though wide, words which do not import charity is not cured by a mere local limitation.

(*continued on p. 825*)

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LOCALITY CASES IN CHARITY—*continued from p. 820*

The *Goodman* line of cases was also marshalled in the judgments in *Re Smith*, and Lawrence and Romer, L.JJ., took as their text one example of them, *Nightingale* v. *Goulburn* (1848), 5 Hare 484, in which was upheld a gift to the Queen's Chancellor of the Exchequer to be appropriated by him for the benefit and advantage of Great Britain. Lawrence, L.J., epitomised the effect of this decision by saying that such a gift was not simply a gift for public purposes generally, which would be void for uncertainty, but a bequest for the benefit of a particular class, albeit a large class, coming within some definite limits and, therefore, " a bequest for a specified public purpose and, as such, a valid charitable bequest." Romer, L.J., obviously thinking of the locality cases, observed that the size of the particular district selected by the testator was immaterial.

Thus, while all three members of the Court of Appeal bore a part in the work of harmonising the two strains of authority, it is from Lawrence, L.J., that we are able to deduce some rationalisation of the locality cases. Though not all public purposes are of necessity charitable, whether or not their benefit is confined to the inhabitants of a district, yet if no other purpose is expressed than that of benefiting such inhabitants that will be taken to be a specified public purpose of a charitable kind. Roxburgh, J., in *Re Strakosch* [1947] 2 All E.R. 607, at p. 608, has a useful passage in more practical terms. " Although a testator can safely declare a trust for the benefit of the community without giving any further indication of the manner in which the benefit is to be conferred, if he departs from this safe path, his trust will fail unless it can be predicated of every mode of application which would fall within the ambit of the trust that it is not only beneficial to the community, but also charitable."

Lord Simonds devoted the concluding passage of his speech in *Trustees of Sir H. J. Williams' Trust* v. *Commissioners of Inland Revenue*, *supra*, to an expression of the same idea. He describes the *Saltash* cases and those corresponding with *Re Smith* as two lines of authority which are apt to converge and cross each other. In *Re Smith* there was " no particularity of benefit and the widest range of beneficiaries "; in the other cases the beneficiaries are localised and the nature of the benefit defined. It is possible, Lord Simonds suggests, to justify as charitable a gift to " my country England " upon the ground that, where no purpose is defined, a charitable purpose is implicit in the context. " It is at least not excluded by the express prescription of ' public ' purposes." (We have cited *Houston* v. *Burns* as a typical example of a gift which was not charitable because of such an express prescription.) " Where the gift is localised but the nature of the benefit is defined," proceeds Lord Simonds, " no reconciliation is possible except upon the assumption that the particular purpose was in each case regarded as falling within the spirit and intendment of the preamble to the statute of Elizabeth." The paramountcy of the preamble is thus reaffirmed even in the locality cases.

We may venture upon three conclusions :—

(1) The specification of a locality, the inhabitants of which are to benefit by the gift, will always satisfy the test of public benefit as opposed to private benevolence, and this is so even if the beneficiaries are confined to a particular class of those inhabitants provided that the class is sufficiently defined.

(2) If no purpose or mode of application of the gift is specified, the benefit to the locality has the further effect of importing a limitation to such purposes only as are recognised by law as charitable, and, therefore, of constituting a good charitable gift.

(3) If express purposes are designated by the grantor or testator, then, notwithstanding that the gift is for the benefit of the inhabitants of a specified district, it will rank as a charity only if all those purposes are of a kind which the law regards as charitable.

A disturbing aside is added by Lord Simonds in the *Williams* case. His lordship says that he finds it difficult to ascribe a charitable quality to the benefit taken by the freemen of Saltash. Unless such an ascription can be made—and no convincing grounds for it have so far as we know ever been advanced—is not our third proposition thrown again into the melting pot ? But there is support for our conclusion in the decision of the Court of Appeal in *Re Strakosch* [1949] Ch. 529 and the better view is probably that, so far as *Goodman* v. *Mayor of Saltash* appears to overlook the ever-present requirement of a charitable spirit and intendment, it must be confined to its own facts. We have already indicated that in it the House of Lords was striving to uphold the exception as charitable. Their lordships cannot of course make bad law, but this seems to be an instance of a hard case making obscure law.

J. F. J.

CARITAS

" CHARITY " is a word with at least three meanings. It has a legal meaning which is notoriously elusive. It has a theological meaning which is hardly less elusive and almost the opposite of the legal meaning. And it has a popular meaning according to which it is used as if it were a synonym of " almsgiving." (The adjective " charitable " is sometimes also used popularly of a person who is prepared to think the best of others, even against appearances.)

Almsgiving may be defined as the giving of material assistance to poor persons. The most striking difference between this and the legal meaning of charity is that the law now uses the word " charity " to describe not an act of giving or even that which is given, but an association or organisation of human beings. To be " a charity " such an association must exist for the purpose of dispensing benefits of particular kinds to the public or sections of the public; and it may itself be the object of the beneficence of individual members of the community who desire to see those benefits dispensed. For example, a school may exist for the sole purpose of educating the children of a locality—a " charitable " purpose; individuals may contribute voluntarily to the school for the furtherance of its purpose. The individual donations are called " gifts for charitable purposes," but the " charity," in the legal sense, is the school itself, which dispenses nothing but learning.

This primary difference between popular and legal charity is, however, to some extent a superficial one. The law of charity is based upon the famous preamble to the statute 43 Eliz. 1, c. 4, which has been preserved in the later charity legislation. The preamble not only nowhere uses the word " charity," but, what is more important, it clearly contemplates the relationship between an individual donor or testator and the ultimate object of his bounty; the machinery by which the bounty will be translated into benefit is not considered. The word " charity " is first used in the cases as a convenient term to describe the gift or devise which creates the relationship and only at a later date as a description of the machinery by which the gift or devise is given effect.

It would be an interesting exercise to follow out this transition to the point at which it became possible to say, as was said in *Mills* v. *Farmer* (1815), 1 Mer. 55, that charity could be a "legatee." There is here space only to point to such cases as *A.-G.* v. *Pearce* (1740), 2 Atk. 87, and *Morice* v. *Bishop of Durham* (1804), 9 Ves. 399, where "charity" is used in the dual sense of the gift and of the benefit-dispensing body which was the intermediate object of the gift. As late as 1828, in *Jones* v. *Williams*, Amb. 651, "charity" was still used to designate the gift itself. It were idle to complain of the vagaries of the common law, still more of those of equity; moreover the transition had its convenience with the institution of charity schools and other such four-square organisations, and it doubles a transition in our everyday language by which we speak of *exercising* charity, *giving* charity and giving *to* charity. None the less the sense in which the term charity is now applied to the dispensing body is little more than a convention; the real essence of charity, even in law, is still the free gift by the individual "for charitable purposes." If we confine our gaze to this "real" legal meaning of charity we see that it does not differ as greatly as we thought from the popular meaning. Differences there still are; legal charity excludes much almsgiving because it has no public object; it includes much giving that could not be described as almsgiving by reason that its beneficiaries are far from poor. But both spring from the same root and the root is the giving of money for the benefit of one's fellows.

Such giving of money for the benefit of one's fellows, usually in the pure form of almsgiving, has been looked upon as a social duty in almost every race and age. Aristotle, it is true, deprecated the indiscriminate distribution of largesse, and Cicero thought that not merely should an almsgiver have regard to merit but he should take care not to impoverish himself. But the general idea is so universal that it is not surprising that English law should have begun to indulge it when the need for Statutes of Mortmain had passed.

What *is* surprising is that such giving should have come by the name of "charity," still more that it should now be almost the only meaning which that word retains. One need not linger over the derivation from "carus" by which the word might be translated "dearness." We need, in fact, go no further back than St. Jerome's Vulgate Bible; for the very existence of the word in our language is due to the fact that St. Jerome (possibly following earlier translators into Latin) chose "caritas" for the *agapé* of which St. Paul was writing in I Cor. xiii. Now it is a commonplace that the New Testament is a revolutionary manifesto, but of nothing in it is this more true than of its proclamation of the virtue of *agapé* or "charity." "Though I bestow all my goods to feed the poor . . . and have not charity it profiteth me nothing. Charity suffereth long and is kind . . . Charity never faileth . . . And now abideth faith, hope and charity, these three; but the greatest of these is charity." Yet even this great passage is no more than an echo and an explanation of the "commandment" from which St. Paul took his text: "Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy strength, and with all thy mind; and thy neighbour as thyself" (Luke x, 27). The charity of the New Testament, where the word begins, is thus primarily and essentially concerned with the love of God, and only then with the love of men, and with the love of men only for God's sake. It is the virtue by which this "supernatural" love is generated. A modern preacher has said that "charity is the luggage we shall take to heaven when we have left everything else behind . . . Charity is the love of God, the thing we were built for." Now charity, so understood, may be expressed in this world in many forms; one man may dedicate life itself to the service of God and man; another may practise the "corporal works of mercy"—feed the hungry or visit the imprisoned ("Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me"—Matt. xxv, 40); a third may sacrifice his luxuries and pleasures to give money to the poor. The prototype of the Christian charitable man is the good Samaritan whose story is used in St. Luke's Gospel to illustrate the "commandment."

The law, on the contrary, pays regard only to charity expressed by giving and then only if the object of the giving be public. Already we may see that the divergence of legal from theological charity is far wider than that which separates it from popular charity. The conduct of the good Samaritan himself would not now be regarded by our law as charitable. But we have not yet emphasised the most fundamental departure of all from the Christian ideal, that by which the law now looks only to the result of a man's giving and regards as irrelevant his belief that his giving is for the public good (*Re Hummeltenberg* [1923] 1 Ch. 237). It follows that his motive in giving is of no account whatever. This is not merely different from, but irreconcilably opposed to, the Christian view, according to which no action can be regarded as charitable except by reference to the motive of love which inspired it—"though I bestow all my goods to feed the poor . . ."

So stands legal charity, the usurper of a noble name. Perhaps our law, from being Christian, has become "humanitarian"—that dangerous word! It would take more than an essay to say how and why this has happened, but one may here say this at least, that the disappearance of the "merit" of charity from our charity law cannot be wholly unconnected with the absence of "merit" and "good works" from the Calvinist theology which has had so great an influence on English public life since the end of the sixteenth century.

A. L. P.

BOOKS RECEIVED

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Brown's Book-keeping and Accounts of Local and Public Authorities. Third Edition. Editor: HENRY BROWN, O.B.E., F.I.M.T.A., F.S.A.A., City Treasurer, Rochester. Assistant Editor: JAMES DEAKIN, F.I.M.T.A., A.S.A.A., Borough Treasurer, Kensington. 1952. pp. viii and (with Index) 678. London: Butterworth & Co. (Publishers), Ltd. £2 15s. net.

Puffs, Balloons and Smokeballs. By A. LAURENCE POLAK, B.A. (Hons. Classics), Lond., a Solicitor of the Supreme Court. Illustrated by LESLIE STARKE. 1952. pp. vii and 137. Chichester: Justice of the Peace, Ltd. 12s. 6d. net. (10s. 6d. cheap edition.)

The Lawyer's Companion and Diary for 1953. By ERNEST L. BUCK and LESLIE C. E. TURNER. 1952. pp. xxiii, 162 and 1519. London: Stevens & Sons, Ltd.; Shaw & Sons, Ltd: 27s. 6d. net.

Consolidated Index to Government Publications, 1936-1940. 1952. pp. 178. London: Her Majesty's Stationery Office. 6s. net.

CHARITABLE GIFTS AND TAXATION—*continued from p. 818*

the age of twenty-five but as a result of such a prospective beneficiary failing to come into existence at all. This fault could be cured by giving an ultimate vested interest in the event of there being no issue who attain twenty-one. For similar reasons the benefit should not be limited to issue who survive the donor.

The result of this sort of settlement is that during his life the donor contributes £100 per annum to charity at a net cost to himself of £2 10s. per annum. On his death estate duty will be payable on the settled funds at 31 per cent., but this would have been payable anyway.

If it is desired to save both tax and duty the problem is necessarily more difficult. Needless to say, it is absolutely fatal so far as estate duty is concerned to have any provision, however elaborately disguised, whereby the beneficial interests in any part of the settled funds change on the death of the donor or at a time to be ascertained by reference to his death (cf. *Burrell & Kinnaird* v. *A.-G., supra*). But nevertheless something can be done.

Suppose a man of fifty-five years of age to have a large income derived from his own large capital. Let him convey investments to trustees, of which he will be one, upon trusts similar to those suggested above but with the important difference that the income ceases to be applicable to charity not on the donor's death but at the expiration of a period of fifteen years. Assuming that the donor survives five years, no estate duty will be payable upon his death (cf. *Commissioner of Taxes of New South Wales* v. *Way and Others, supra*). If he dies under the age of seventy years the trustees will continue to pay the income to charities for the remainder of the period and at the end of that period the beneficiaries will take the capital free of estate duty which might have amounted to anything up to 80 per cent. Of course, they may have to wait for it but it is not suggested that the donor should settle all or even a major portion of his fortune in this way: in any case, they will have vested and saleable interests. If the donor survives the age of seventy years the settlement will be wound up, but the donor will have provided for his charitable subscriptions for fifteen years at a negligible cost by way of income and will have provided a few thousands for his family free of estate duty.

The exact provisions may be varied or elaborated as each case demands. In the case of a very rich man who, perhaps, contemplates making subscriptions of £1,000 per annum (at a cost to himself of £25) it might be worth making ten settlements to produce £100 each terminating at intervals from ten to twenty years.

G. B. G.

A Conveyancer's Diary

THE NATIONAL HEALTH SERVICE ACT AND GIFTS TO HOSPITALS

SINCE the National Health Service Act, 1946, came into force on the day appointed for that purpose, which was the 5th July, 1948, there have been a number of decisions on the effect which that Act had on gifts and trusts in favour of hospitals affected by the Act. As these decisions were reported, I commented on them in this "Diary," but my comments were directed to the case under consideration and, with the somewhat limited view that most practitioners had in the early days of the Act's operation, it was difficult to put any individual case in its proper perspective against the background of the Act as a whole. I do not mean by this, of course, that in order properly to interpret or administer a gift or trust in favour of a hospital at the present time it is necessary to have a minute acquaintance with all the provisions of this Act: out of its eighty sections and ten Schedules there are, in fact, less than half a dozen sections which bear directly on this particular problem; but the portions of the Act which are material are not all together, and in some cases at any rate their impact on the typical kind of benefaction with which the cases I have mentioned are concerned is not immediately evident. As Vaisey, J., said in his judgment in the Court of Appeal in the first of these cases to come before the courts (*Re Kellner's Will Trusts* [1950] Ch. 46, at p. 62): "Whether it was the primary intention of the Legislature that [s. 60 of the Act should cover the case before the court] may, I think, be doubted. There are, in my judgment, other types of case to which s. 60 applies, if I may so put it, quite obviously and indisputably. Its application to the present case is only to be discovered by a microscopic examination of its terms . . ."

The gradual accumulation of decisions on the construction and application of the material parts of the Act has made it possible to base an examination of certain everyday questions on the Act on a firmer foundation of knowledge. It is, of course, true to say that every case of a gift or trust in favour of a hospital must be considered primarily on the circumstances and language in which such a gift is made, or such a trust is declared, and the very general observations which follow must be read with that in mind, but nevertheless they may be of some help in finding a way through an admittedly difficult statute.

The first question I wish to discuss is the meaning to be attached to certain words and expressions used in conditions annexed to a gift to a hospital, of which the most important is the expression "nationalised." The Act of 1946 was passed at a time when several measures which could truly be described as "nationalising" were under consideration, but the method adopted for bringing various medical services and the organisations which supplied them to the public under centralised control was different from that which was later to be used in dealing with such services as, for example, transport or electricity supply. The Act of 1946 did not transfer both the physical assets of the voluntary hospitals of this country and the right to control their operation to a single corporation, as was later to be done in the case of, for example, the railways; the physical assets of the hospitals affected by the Act (and it is important to remember that there are still quite a number of hospitals and analogous institutions which have not been so affected) were transferred to and vested in the Minister of Health, but the control of these hospitals was entrusted to the hospital management committees and regional hospital boards which were set up under the Act throughout the country for the purpose of exercising such control, and the boards of governors which were set up to replace the corporations which previously controlled the teaching hospitals. The assets so vested in the Minister include, in the case of all hospitals affected by the Act other than teaching hospitals, the endowments of the hospital in question; in the case of any teaching hospital affected by the Act, its endowments vested in its board of governors. This provision, and certain others, had the effect of giving a teaching hospital

a rather greater degree of independence than a non-teaching hospital affected by the Act possesses.

That being, broadly speaking, the effect of the Act from this point of view, the question soon arose whether a hospital affected by the Act could be said to have been " nationalised " by it or not, and in *Re Bland-Sutton's Will Trusts* [1951] Ch. 70 and 485 (C.A.) this question led to a division of opinion between Danckwerts, J., and the Court of Appeal. The testatrix's will provided that if the Middlesex Hospital should become nationalised or pass into public ownership, the income of a fund directed by the will to be paid to a pathological institute carried on in connection with the hospital should cease to be so payable. Danckwerts, J., held that, for the purpose of a defeasance clause of this kind, at any rate, the Middlesex Hospital had neither become nationalised nor passed into public ownership, but this decision turned on the somewhat special facts of the case that the medical school of which the pathological institute formed part was left untouched by the provisions of the Act which vested the rest of the hospital's assets in the Minister, being exempted therefrom under s. 8 of the Act, and as it could not therefore be said that the whole of the hospital had become nationalised or passed into public ownership, the condition annexed to the gift had not operated. The Court of Appeal took a rather broader view of the effect of the Act in the circumstances of the case, and held that the hospital had both become nationalised and passed into public ownership on the appointed day. In view of the well-known rule that defeasance clauses are always construed strictly, there can be no doubt, after this decision (which was subsequently upheld on appeal to the House of Lords), that a hospital affected by the Act becomes " nationalised."

A somewhat similar point, although this time on a condition precedent, came up in *Re Frere* [1951] Ch. 27, where a legacy was given by will to a named hospital if at the testator's death it was still run on a voluntary system and was not taken over by the State, and it was conceded that this condition came into operation on the appointed day. In a Scottish case (*Dundee General Hospital* v. *Bell's Trustees* [1950] S.C. 406) a legacy was payable to a hospital only if the testator's trustees should be satisfied that the hospital in question had not been taken over or placed under the control of the State, and the trustees having decided, in the exercise of their discretion, that the Act had placed the hospital under such control, the court held that it had been a proper exercise of their discretion on their part. Neither of these cases is, therefore, direct authority that a condition in an English will that a hospital shall not be placed under State control comes into operation when the hospital's assets are vested in the Minister under s. 6 of the Act, and its control vested in a management committee, or regional board or, in the case of a teaching hospital, board of governors, under s. 11 ; but there can be little doubt that if the point actually came up for decision on a condition in this or similar language, that would be the result.

But if, as a matter of drafting, it is necessary to frame a condition defeating a gift to a hospital still outside the National Health Scheme, in the event of the hospital becoming subject to the scheme, it seems preferable to follow the language of s. 6 (1) of the Act, so far as possible, rather than to use expressions such as those which were used by the testators in the cases just mentioned. The turgidity of this language should not deter the draftsman, however alien it may be to his style.

The second matter that comes to my mind as requiring attention is the effect of the Act on what, for the present purpose, may be called undisclosed trusts for the benefit of charitable institutions. Testators frequently direct that a fund should be held in trust for a number of charitable institutions, and if these are named in the will no difficulty arises if some of such institutions are hospitals affected by the Act : such hospitals are still charities within the strict legal sense of that term (*Re Frere*, *supra*), and according to the recent decision in *Re Perreyman* (reported in *The Times* on the 27th November, 1952), charities which are in need of money within an express condition to that effect. It sometimes happens, however, that a testator wishes to keep some control over gifts of this kind so long as he can, and so instead of allotting a fund for division among named charitable institutions out and out, gives the fund to trustees for division at their discretion among such charitable institutions as they may select, and notifies his trustees extra-testamentarily of the institutions which he desires to be benefited. Such a gift is a good gift if the objects thereof are charitable institutions, but not necessarily otherwise ; and it is a convenient form of disposition, in that the testator can change its beneficial effect without executing a new testamentary document. In this respect, therefore, the fact that a hospital retains its character of a charitable institution for all the purposes of the law relating to charitable trusts is important, for otherwise a testator minded to benefit a particular hospital could not leave its formal selection as a recipient of his bounty to his trustees.

In this connection it is worth noting that s. 59 of the Act, which authorises management committees, regional boards and the boards of governors of teaching hospitals to accept, hold and administer property " for purposes relating to hospital services " within the area or for the hospital under their control, entitles such bodies to accept gifts on trust for a particular hospital, if the body manages or controls more than one (*Re Morgan's Will Trusts* [1950] Ch. 637), or for a particular purpose (*Re Ginger* [1951] Ch. 458), or to be administered in a certain way (*Re Meyers* [1951] Ch. 534). The courts have been liberal in the interpretation they have put upon testators' desires in these cases. For instance, in *Re Ginger*, *supra*, the bequest (in a will made before the Act was ever thought of) was on trust to found a cot in a hospital in memory of a relative of the testatrix, and at the date of the will the hospital had a scheme whereby persons founding beds thereunder could nominate patients to occupy them. The nationalised hospital, as it had become when the testatrix died, was prepared to name an existing bed in memory of the relative of the testatrix, as she wished, but could not allow the nomination of persons to occupy it. The court held that the right to nominate patients was no essential condition of the gift, and on the hospital's undertaking to name a bed in memory of the testatrix's relative and to invest the fund and apply the income in perpetuity for the purposes of the hospital, the gift was held valid. In *Re White's Will Trusts* [1951] 1 All E.R. 528 a gift to a hospital to be applied in perpetuity for a home of rest for the nurses of the hospital was upheld. Nevertheless, in present conditions, unless the particular purpose which the benefactor has in mind is the broad purpose of assisting one hospital which may be managed in a group with several others, it is advisable to ascertain from the body controlling the hospital before the gift is made or the trust directed whether the purpose is compatible with the scheme, or if this is not practicable, provide expressly for what is to be done with the fund in the event of the gift or trust being refused or being held invalid.

I have said that s. 59 of the Act, which is the section under which gifts and trusts for hospitals which are made or become effective after the appointed day can be accepted by the body of management appropriate to the hospital in question,

authorises the acceptance of such benefactions even if they are made upon a particular trust. There is here a marked contrast with s. 60, which, as was decided in *Re Kellner's Will Trusts, supra*, is the section which saves and authorises the acceptance by the appropriate managing body of benefactions in favour of hospitals affected by the Act which were made or became operative before the appointed day. Section 60 (2) provides that any sums paid to the appropriate body under that section must, so far as practicable, be applied by them for the purposes specified in the trust instrument, and thus necessarily implies that such sums are received by the appropriate body free from any trust. This distinction is not made academic by the passage of four years since the appointed day, since there are many trusts on foot in which interests have been limited to hospitals in remainder after life interests which are still in being, and to such cases, when the life interests fall, s. 60 will apply: for a reported case of this kind, see *Re Gartside* [1949] 2 All E.R. 546, a decision of the Vice-Chancellor of the Duchy of Lancaster. In cases falling within this last-mentioned decision it is, thus, useless to attempt to extract any undertaking from the management body in stricter terms than those to be found in s. 60 (2), whatever the nature of the directions laid down by the benefactor, unless, of course, these directions so fetter the benefaction itself as to be equivalent to a condition; in that event the effect of the benefaction would have to be referred to the court.

I have not mentioned any of the reported cases on this aspect of the Act of 1946 which are entirely confined to points of construction on the will or trust instrument under which the benefit to the hospital arises, such as *Re Glass* [1950] Ch. 643*n*, and *Re Hunter* [1951] Ch. 190. These cases purport to do no more than follow, in a way which was thought at the time to be, perhaps, unnecessarily conformist, the much-discussed decision in *Re Morgan's Will Trusts, supra;* the latter, it will be recalled, was the first reported decision on a gift to a hospital contained in a will made before the appointed day of a testator who died after that date, a kind of gift which many thought would have been caused to lapse by the Act but which, in the event, was held valid. The point is now so well settled, or appears to be so, that the controversy which once raged over it is forgotten, and in any case these decisions are of no interest to the draftsman, who is not primarily concerned with the past. Another point which at one time exercised the minds of those who concerned themselves with the effect of the Act on gifts to hospitals was the possibility that different results might follow according as the gift to the hospital took the form of a legacy or a share of residue. This point arose in *Re Kellner's Will Trusts, supra*, in this way. Under s. 60 (1), which, as has been seen, was held to be the operative section in that case, where property is held on trust immediately before the appointed day and the terms of the trust instrument require the trustees to apply it for the purposes of any hospital affected by the Act, the trustees are (in effect) required to apply it for the benefit of the hospital. The testatrix in that case gave a share of her residuary estate to such a hospital, and died before the appointed day. Her estate was still in the course of being administered on that day and Harman, J., held, therefore, that all that the hospital was entitled to on the appointed day was the right to have the testatrix's estate administered according to law, and on completion of the administration to have the balance remaining in the personal representatives' hands distributed in the proportions provided by the will. The learned judge further held that for the purposes of s. 60 (1) the expression "property" did not include such a right as this, and that there was, therefore, nothing to which the language of s. 60 could fasten. On this decision it could be argued that there might perhaps be a difference for the purposes of s. 60 between the position of a hospital given a legacy and a hospital given a share of residue, in the class of case to which s. 60 applied. But the decision of Harman, J., in this case was ultimately reversed on appeal, the Court of Appeal holding that "property" for this purpose included a share of residue, and the point of distinction suggested by this case is, therefore, no longer open.

There are still some questions on the parts of the Act considered in the cases mentioned above which remain unresolved: the principal one, perhaps, is whether the reasoning in *Re Gartside, supra*, would cover a case where the interest of the hospital was a contingent, and not a vested, interest on the appointed day, and there are others. But taking it by and large the courts have given reasonable shape to a mass of legislation which five years ago seemed completely amorphous, and this part of the National Health Scheme at any rate has been made to work reasonably well. That many of the problems which the courts have had to solve would never have arisen if the draftsman of the Act had been acquainted with the practical side of conveyancing and with the language of conveyancers is a thought out of keeping with the tone of this issue of the JOURNAL, but it is one which I cannot help giving voice to at the end of this review of some of the difficulties which have been overcome since the Act came into force.

"A B C"

Landlord and Tenant Notebook

UNAUTHORISED USER: TRUSTEES IN TROUBLE

A FEW weeks ago, the "Notebook," discussing the recent decision in *Dobbs* v. *Linford* [1952] 2 T.L.R. 727, *ante*, p. 763 (C.A.), had occasion to refer to three cases in which the estate governors of Dulwich College had sought to enforce covenants designed to protect residential amenities (96 SOL. J. 776), and in one of those cases they were not successful. That was because rent control legislation was found to protect sub-tenants more than the covenants protected amenities. In this article I propose to advert to cases in which trustees of charitable institutions have been on the defensive. One does not readily associate trustees with breaches of covenant, with nuisance and annoyance, and the like; but the fact is that those who manage charities have sometimes found themselves taxed with such, and have not always succeeded in answering the complaints made against them. The authorities may be said to draw attention to the objectiveness of covenants against carrying on business, against nuisance and annoyance, and covenants to use demised premises as private residences only.

One such case, *Portman* v. *Home Hospitals Association*, decided in 1879, is recorded in a footnote to *Rolls* v. *Miller*, *infra*, but is of interest because of Jessel, M.R.'s observations on what would nowadays be called "the profit motive" in relation to the question of the meaning of the words "business, occupation, and calling." The covenant sued on was in the lease of a house and was a covenant "not to use the premises . . . or any part thereof, or permit the same or any

part thereof to be used in the exercise or carrying on of any art, trade, or business, occupation, or calling whatsoever." The defendant, an incorporated association, provided medical attendance and nursing, food and medicine, and also the comforts and advantages of a home for members and their nominees, and in accordance with what members paid. Infectious diseases were not treated. The lessor having sought an injunction, it was argued, *inter alia*, that " any occupation or calling whatsoever " means " where you get a profit." This contention was rejected by the learned Master of the Rolls, who had, however, earlier in his judgment, mentioned the calling in by some thirty or forty patients of a physician who " received his fee," and held that the association, by that calling in, allowed the physician to exercise his calling on the demised premises. But a later passage makes it clear that one can exercise a calling without seeking material reward. Indeed, when he came to examine the meaning of " occupation," Jessel, M.R., said that it would be very ridiculous to say that opening a bookseller's shop was using a house within the meaning of the words of the covenant and at the same time to say that the identical user in every respect, except that it was done from benevolence or charitable motives, was not to be so treated. So, while regretting the result, the learned Master of the Rolls granted the injunction.

Rolls v. *Miller* (1884), 27 Ch. D. 71 (C.A.), concerned a covenant that the lessee of a house should not " use, exercise, or carry on upon the premises any trade or business of any description whatsoever," and the nature of the proceedings was a motion to commit trustees of a charitable institution, who were assignees of the lease, for breach of an injunction previously granted. The institution in question was known as " The Home for Working Girls " (in the New Kent Road, South London), the beneficiaries being provided with board and lodging on the premises in return for small payments—there was always a heavy loss. After Pearson, J., had granted an injunction restraining such use, the trustees hit upon the idea of supplying the board and lodging free, and wrote to the plaintiff's solicitor setting out, under five heads, how they proposed to conduct the establishment: free use, working girls and women between fifteen and twenty-five; personal applications to be made; no charge for use of house or meals; residents would " therefore " consider themselves guests of the superintendent, who would desire them to conduct themselves as if they were in their own homes; attendance at prayers to be encouraged. They suggested that the carrying out of this intention would not be a breach of the injunction and agreed that the question should be tested by an application for attachment to be made by the plaintiff.

Pearson, J., decided the issue in the plaintiff's favour; but undoubtedly the defendants' case (they were represented by, *inter alia*, Sir F. Herschell, S.-G.: in those days the law officers did not devote the whole of their time to advising Government departments about what they might and might not do) made some impression on the learned judge, who repeated a hint given on the occasion of the grant of the injunction, namely, that the parties should take the opinion of " the superior court." One point made by the defence was that the lease said nothing about using the premises as a private dwelling-house only. But a decision of Lord Ellenborough, in *Doe d. Bish* v. *Keeling* (1813), 1 M. & S. 95, was found helpful to the plaintiff as regards what was meant by " business." In that case a school was held to be a business because, it was considered, the object of the covenant was to prevent annoyance which " can be predicated of almost any business." The evidence had shown that some sixty boys would attend the school, and the reasoning of the judgment was that the resulting noise and tumult would be a considerable annoyance, while their mere " exhibition " might be " said somewhat to resemble a show of business within the terms of the covenant." No one having cited the nursery rhyme describing and contrasting the compositions of little boys and little girls—and one might expect the contrast with girls and women between fifteen and twenty-five years of age to be even greater—Pearson, J., held that the home would be a business; also making the point that for every purpose for which it was to be used, with the single exception of young women actually lodging and boarding there, the purposes would be quite outside the ordinary domestic life of persons. As to the occupiers being " guests," it was the public who were admitted: " they are invited to come and ask to be admitted, which is what your guest commonly does not do." The defendants this time took the hint, but the Court of Appeal upheld Pearson, J. The judgment of Lindley, L.J., is particularly instructive where it refers to the necessity of inquiring the object of such a covenant: it would be ridiculous, it was pointed out, to say that such a covenant would be infringed if a private family had their victuals cooked in the ordinary way by a cook whose business it was to cook victuals. The object, though not expressed, was to ensure that the house should be used not otherwise than as a private dwelling-house. Perhaps I should add that the court accepted an undertaking and did not commit the trustees to the not distant establishment at Brixton—according to the judgments, a " business," but not one which violated any covenant.

In between these two decisions, Jessel, M.R., had granted an injunction in the case of a covenant the words of which were " peculiar " (*Bramwell* v. *Lacy* (1879), 10 Ch. D. 691), the words being ". . . shall not exercise or carry on . . . any trade, business or dealing whatsoever, or anything of the nature thereof . . . or be party to or suffer any act or thing which may be or grow to the annoyance, damage, injury, prejudice, or inconvenience of the neighbouring premises." The premises were a house in a residential neighbourhood and the defendants, the committee of management of the Hospital for Diseases of the Throat and Chest, Golden Square, Regent Street, had bought the lease for the purpose of establishing a branch hospital for poor persons suffering from the diseases named. It was, perhaps, unfortunate, from the viewpoint of affording guidance to trustees, that some patients made small monthly payments: this fact was stressed or at least mentioned in judgment, and may have misled the defendants in *Rolls* v. *Miller* into thinking that the abolition of charges would put them right. On the other hand, the fact that some of the diseases treated were infectious was an important factor in the last case I propose to mention.

This was *Frost* v. *The King Edward VII National Memorial Association for Prevention, Treatment and Abolition of Tuberculosis* [1918] 2 Ch. 180, and it is of interest to note that the defendants—a private person who had given and the association who were using premises as a hospital—were held not thereby to infringe a covenant not to exercise, etc., upon the demised premises any noisy, noisome or offensive trade or business, or to do, etc., anything which might be hazardous, or noisome, or injurious, or offensive to the lessor or his property or any of his tenants. It may well be that the plaintiffs were misled by the very lengthy and comprehensive name of the association, whose witnesses in fact admitted that tuberculosis was endemic and infectious; but the premises were in fact being used as a hospital for children suffering from surgical tuberculosis only, and all experts were agreed that the risk of infection was negligible. The defendants were likewise able to dispose of exaggerated

complaints about sights, noises and smells said to disturb the neighbourhood. But, unfortunately for them, they had failed to appreciate that a different covenant, contained in a conveyance of the reversion, bound them; and this was a covenant not at any time to permit the premises to be used for the purpose of any trade or business or otherwise than *as a private dwelling-house*. I discussed the effect of such a provision in the article mentioned in my opening sentence; and there was, of course, no answer to the claim based thereon.

It is, perhaps, noticeable that the mid- or late Victorian authorities which I have mentioned distinguish homes from business premises partly by reference to the amount of activity or noise occasioned in use, and the criticism might be offered that, since the invention of telephones, radio and television, quietude and tranquillity are no longer to be regarded as essential features of a private dwelling-house. The answer is, however, that the authorities do not warrant the proposition that the consideration in question is *the* test; and that whatever changes the structure of society may have undergone, a covenant to use premises not otherwise than as a private dwelling-house will be infringed, not by the employment of a cook, Lindley, L.J.'s observation in *Rolls* v. *Miller* being still valid, but by taking even hand-picked paying guests who, as Pearson, J., had put it in that case, "are invited to come and ask to be admitted." *Thorn* v. *Madden* [1925] Ch. 847 and *Tendler* v. *Sproule* [1947] 1 All E.R. 193 (C.A.) have demonstrated this.

R. B.

MUSIC AND CHARITY

THE fact that there is among the uses and purposes enumerated in the preamble to the Statute of Elizabeth I—the root of our law's idea of charity—no direct mention of the arts is not, of course, to be taken as implying any lack of sympathy on the part of the First Elizabethans with artistic aims and pursuits as purposes beneficial to the community. The salutary properties of music, in particular, were well appreciated in their age. But in an epoch when the madrigal party and the consort of viols represented the finest flowering of the urge for concerted music-making, the difficulties of organising adequate performances of music were not financial ones, as the recent report of the Arts Council shows them to be to-day.

The preamble does, however, specify "schools of learning," and that without any qualification or restriction of the subjects to be learned. A gift to establish a musical scholarship would seem therefore to be unobjectionable. Further, as is well known, the purposes enumerated by the preamble are capable of extension by analogy, and by the capricious process of analogy with analogy. One result of this is that an object of a sufficiently public nature which tends to the furtherance of education, in or out of school, is regarded as charitable. A good example in the sphere of musical education is the case of *Commissioners of Inland Revenue* v. *Glasgow Musical Festival Association* [1926] S.C. 920. This being an income tax case, the law of charity applicable was that recognised in the English courts of equity, notwithstanding that it was decided by the Court of Session and concerned a Scottish organisation.

The association was an unincorporated society of individuals, firms and companies, as well as musical societies, clubs and choirs, which existed to encourage singing. It would certainly have appealed to a great Elizabethan, William Byrd, who set forth in the advertisement of one of his publications some cogent reasons "to perswade everyone to learne to sing." As one of its main objects, the association promoted and conducted an annual festival at which choirs and individual singers performed in competition for trophies, diplomas and certificates. The competitors paid entrance fees, but the greater part of the association's income was derived from subscriptions of members and from admission money charged to the public coming to hear the festival. Exemption was claimed from tax on the association's investment income, and also on the profits of the festival, and as the law then stood the latter claim involved the contention, not only that the association was a charity, but also that the work in connection with the trade represented by the promotion of the festival was mainly carried on by beneficiaries of the charity.

The Court of Session held that the Special Commissioners had been justified in deciding both points in favour of the association. Lord President Clyde generalised the objects as the stimulation of public interest in music, and the encouragement of those members of the public who had musical gifts to cultivate them. He confessed to some difficulty in deciding whether these objects could be ranked as species of the educational genus. They aimed rather at the promotion of self-education in a department of æsthetics than at the provision of any form of instruction. Nevertheless, the festival was of a kind that was associated with and complementary of the musical instruction provided by other agencies. Lord Sands also treated the case as one on the borderline, but Lord Ashmore said quite definitely that the Commissioners were entitled to hold the association to be a trust for the advancement of education, "inasmuch as its objects are directed and are calculated to refine and elevate the taste and aspirations of its members" and others brought under the festival's influence. The work of the festival, too, was carried on mainly by the competitors, who were beneficiaries of the charity.

It may be noted that the law now provides, alternatively, for exemption from Sched. D tax on the trading profits of a charity if the trade is exercised in the course of the actual carrying out of a primary purpose of the charity (Income Tax Act, 1952, s. 448 (1) (*c*)).

Education, then, may be advanced by means of musical activities of a communal nature. Music may also be connected with another recognised purpose of charity—religion. It appears that, although the upkeep of an organ in church and an organist to play it were, by 1736, established as good charitable objects, there was doubt whether at that date it was legal in ordinary parish churches to have choirs (*A.-G.* v. *Oakover*, cited and explained in *A.-G.* v. *Whorwood* (1750), 1 Ves. Sen. 534). But the decision with regard to the choir was doubtful, and Simonds, J., as he then was, in *Re Royce* [1940] Ch. 514, declined to treat it as applicable in the present century. In that case a legacy and a share of residue were bequeathed to the vicar and churchwardens of a named parish church for the benefit of the choir. This was construed as an impersonal gift for the advancement and improvement of the musical services in the church by means of a choir, and was held to be charitable as a gift for the advancement of religion by a particular mode.

What of musical activities as objects of charity apart from questions of education or religion? There is no satisfactory clear-cut decision, but on the whole it is thought that a gift for the promotion of music could be upheld,

provided that the benefit was sufficiently public in extent. This public element might result from the benefit being conferred on the inhabitants of some named locality, for Cohen, J., appeared ready to hold in *Re Corelli* [1943] Ch. 332, had it not been for other provisions in the will, that the promotion of science, literature and music among the people of Stratford-on-Avon was a charitable purpose. The limitation of the benefit to a given district is not of course the only method of introducing the necessary public element into charitable gifts.

To the extent that our surmise conflicts with the reported decision in *Re Ogden* (1909), 25 T.L.R. 382, that a bequest to encourage artistic pursuits was not charitable, it is submitted that that decision may now safely be ignored. As Danckwerts, J., said in *Crystal Palace Trustees* v. *Minister of Town and Country Planning* [1950] 2 All E.R. 857*n*, *Re Ogden* has not been favourably regarded by the Court of Appeal. (The Crystal Palace was for long a home of good orchestral and choral music.) In so far as the objects for which the Palace trustees held the property included the promotion of art, the learned judge found no real difficulty in regarding them as charitable.

The case in which *Re Ogden* was scouted by the Court of Appeal was *Royal Choral Society* v. *Commissioners of Inland Revenue* (1943), 169 L.T. 100. There the court also considered *Re Allsop* (1884), 1 T.L.R. 4, in which the Nottingham Sacred Harmonic Society succeeded in convincing Chitty, J., that it was *not* a charity. That society was, however, found to be kept up by its members for their own amusement. The Royal Choral Society, on the other hand, having for its object the advancement of choral singing, and maintaining a choir, as Lord Greene, M.R., thought, partly as a means of training the singers and partly as an instrument for the public performance of fine musical works, was held to be entitled to charity status. The educational aspect of the society's activities is given prominence in the judgments, but we have the support of a comment of Danckwerts, J., on this case (*loc. cit.*) for the view that the Court of Appeal also regarded the promotion of the arts, and in particular public performances of good music, as a purpose which was for the benefit of the public at large and of a charitable nature.

THE CARE OF CHILDREN

THE orphan or unwanted child in 1952 is, happily, much better looked after than he would have been a century ago. " Oliver Twist " showed the manner in which the then poor law dealt with children in its care. As time went on, a kindlier attitude towards such children developed among the authorities administering the poor law, but the report of the Curtis Committee in 1946 on the methods of providing for children deprived of a normal home life showed that there was still plenty to be done.

The Children Act, 1948, was passed largely as a result of the Curtis report and in this Act, the Children and Young Persons Acts, 1933 and 1938, and the Children and Young Persons (Amendment) Act, 1952, the practitioner will find the code of law applicable to the care of orphan children and of those neglected, ill treated or abandoned by their parents, and to the care and treatment of those who pass through the juvenile courts or are beyond control. Unlike some other branches of the law, the statutes themselves have been but little supplemented by statutory instruments and regulations. Throughout this article, " local authority " means the council of a county or county borough.

Before turning to these Acts, let us deal first with a child wanted by someone who is not his parent, so that the intervention of the local authority is unnecessary. Thus, if Tom's mother died last year when he was six and his father does not want to keep him, his grandmother or aunt, if wanting to have Tom, can apply to a magistrates' court or the county court to be appointed joint guardian with the father (Guardianship of Infants Act, 1925, s. 4). Once this appointment has been made, it is submitted that the father could be called upon to pay maintenance pursuant to the Children and Young Persons Act, 1932, s. 79, so long as the child remained in her custody. Where an infant has no parent, no guardian and no other person having parental rights over him, the court may, on the application of any person, appoint that person to be his guardian (Children Act, 1948, s. 50).

The latter provision and the Guardianship of Infants Acts apply, according to the better opinion, only to legitimate children. Where a child is illegitimate and an affiliation order is in force, the court can direct payments under it to be made by the father to the person having the custody of the child if the mother dies or becomes insane or if (and so long as) she is in prison (Poor Law Amendment Act, 1844, s. 5). Further, by the Affiliation Orders Act, 1914, s. 3, an affiliation order may, on the application of the person for the time being having custody of the child legally or by any arrangement approved by the court, be made or varied by a magistrates' court so as to provide that the payments shall be made to the applicant.

Affiliation orders and agreements to maintain illegitimate children cease to have effect on adoption orders being made, without prejudice to the recovery of arrears (Adoption Act, 1950, s. 12 (1)), but this provision only applies to adoption orders made after 31st December, 1949. Moreover, where a mother who is a " single woman " adopts her illegitimate child, the order or agreement does not cease to have effect unless and until she marries (*ibid.*, s. 12 (2)).

Any children may be adopted, provided the requisite consents are obtained or dispensed with. It should be remembered that, where a child is taken with a view to adoption, the local authority must have been notified at least three months before an adoption order is made (Adoption Act, 1950, s. 2 (6)). Section 2 (6) also requires that the child should have been continuously in the care and possession of the proposed adopters for at least three consecutive months immediately preceding the date of the adoption order. Section 2 (5) provides that an adoption order shall not be made unless the applicant and the infant reside in England; that means that the applicant must have his settled headquarters here, and an officer in the colonial service, who only comes to England on his leaves, is not resident here, although he has bought a house here and intends to live here permanently on his retirement (*Re Adoption Application No.* 52/1951 [1951] 2 All E.R. 931). A natural father, who has an honest desire to keep his child and can contribute to its upkeep, does not " unreasonably withhold " his consent to its adoption, although he has no home immediately available; the test is not the welfare of the child but the attitude of the father (*Hitchcock* v. *W.B.* [1952] 2 All E.R. 119). Nor does a mother unreasonably withhold her consent to adoption by foster-parents, who have had the child for some

time, merely because she withdraws a written consent to its adoption; it is not unreasonable in her to refuse to sever irrevocably the links between herself and her child merely because adoption would conduce to the latter's welfare (*Re K, an infant* (1952), 96 SOL. J. 764. As the local authority have to be notified of the intention to adopt and are respondents in the court proceedings, an unfavourable report by their officers on the adopters will obviously carry great weight with the judge or magistrates, especially when those officers have been visiting regularly since notification of the intention to adopt.

By the Adoption Act, 1950, Pt. II, the only bodies which may make arrangements for adoption are local authorities and registered adoption societies.

By the Public Health Act, 1936, s. 206, and the Public Health (London) Act, 1936, s. 257, as amended by the Children Act, 1948, s. 35, a person who undertakes for reward the nursing and maintenance of a child under fifteen years of age apart from his parents, or having no parents, must notify the local authority. Change of residence, death and removal of the child must also be notified to the local authority and the coroner must also be informed of its death. Life insurance on a foster-child is forbidden, as are anonymous advertisements offering to undertake the care of children. Foster-children may be removed by order of a magistrates' court or (if there is imminent danger to the child's health) of a magistrate *ex parte*, if the premises or environment are unsuitable or the custodian is unfit to have the care. Child protection visitors will visit the child from time to time. There is exemption from these provisions, however, where the child is being maintained apart from his parents by his legal guardian or by the grandparent, brother, sister, uncle or aunt, whether by consanguinity or affinity, or by a person who would be so related if the child were legitimate.

Further, the Nurseries and Child-Minders Act, 1948, requires certain premises (not being private dwelling-houses), which are used as day nurseries for children under fifteen, to be registered with the local authority. By the same Act, persons (not being relatives, as above defined) who receive into their homes children under five for reward to be looked after for the whole or part of the day or for a period not exceeding six days must likewise register themselves with the local authority. The "baby-sitter" who, for payment, goes to someone else's house to mind the baby need not register under this Act, but it would seem that he would have to register if he took children (being under five) to his own house to look after, provided he took more than two and the children came from more than one household (see s. 4 (2)). Both this Act and the provisions of the Public Health Acts as to foster-children are much more detailed than the outline given above; the practitioner who does have to concern himself with either Act will find the book on "The Children Act, 1948, and the Nurseries and Child-Minders Regulation Act, 1948," by Morrison and others, to be a valuable guide to these rather involved subjects. Part III of the Adoption Act, 1950, also imposes duties and restrictions where arrangements are made for placing a child under fifteen (otherwise than temporarily) with people who are not related (as above defined) to it and some person (other than the parent or guardian) participates in making the arrangements, e.g., the matron of a nursing home placing an illegitimate baby with a couple who desire to adopt a baby.

Where a child has committed an offence he may, if it is an offence punishable in an adult with imprisonment, be sent to an approved school or committed to the care of a fit person who is willing to have him. In areas served by classifying approved schools, the offender generally will be sent there first, so that a suitable school can be selected for him (Children and Young Persons (Amendment) Act, 1952, s. 6). Section 71 of the Children and Young Persons Act, 1933, sets out the periods for which he may be detained in an approved school, but very many boys and girls are released on licence before their full term has expired; the juvenile court can also recommend (though not order) that the offender be sent to a "short-term" approved school, where the detention lasts not more than a year. Committal to the care of a fit person is a less drastic way of getting a juvenile out of unsatisfactory home surroundings; the fit person may, but need not, be a relative and usually is the local authority. The "fit person" order remains in force until the juvenile is eighteen but it may be revoked by a juvenile court under s. 84 of the 1933 Act. Many local authorities place a juvenile committed to their care in one of their own or a society's children's homes for a while and, if he proves satisfactory, then board him out with suitable foster-parents, he remaining the while under the general supervision of the authority. Or, if his parents have become more suitable, he can be boarded-out with them, with the right in the authority to remove him if things go wrong again.

The offender's parents may be ordered to contribute towards their child's upkeep while he is in an approved school or in the care of a fit person, and there is now no limit to the amount which they may be ordered to pay. The contribution order may, if the parents are present, be made at the same time as the approved school or fit person order is made; otherwise, it can be made later by a magistrates' court. These orders are all made and enforced in magistrates' courts but sometimes the authority will enter into an agreement with the parent to pay for the child's upkeep; such an agreement is enforced in the county court but it has been argued that there is no consideration for it and, if it is not under seal, it may therefore be unenforceable. Parents do not have to pay after their child becomes sixteen; then the juvenile himself, if earning, may be ordered to contribute.

Where there are children in distress of some kind, they can be helped, without the intervention of the juvenile court, under the Children Act, 1948, s. 1. By the Children Act, 1948, s. 1, a local authority must receive into their care a juvenile (under seventeen) who is an orphan or has been abandoned by his parents or guardians or is lost or whose parents are, temporarily or permanently, prevented by mental or bodily disease or infirmity or by any other circumstances from providing for his proper accommodation, maintenance or upbringing, provided the authority's intervention is necessary for his welfare. The physical action of "taking into care" probably means that the juvenile will be put in a children's home, but it is the duty of the authority to try to secure that his care is taken over by his parent or guardian or by a relative or friend of the same religious persuasion. Moreover, by s. 1 (3) the parent or guardian may take the child out of the authority's care at any time where the authority have acted under s. 1 only. To obviate unsuitable parents doing this, s. 2 of the 1948 Act permits the authority to pass a resolution as to any child under eighteen already in their care under s. 1, transferring parental rights to the authority. This may only be done if (*a*) the parents are dead and there is no guardian; or (*b*) the parent or guardian has abandoned him or suffers from a permanent disability rendering him incapable of caring for the child or is of such habits and mode of life as to be unfit to have the care of the child. Written notice of the resolution must be served on the parent (unless he consented to it), if

he can be found, and, if he objects within a month, the matter is determined by the juvenile court.

It will have been seen from the above that children can be taken into care only if they have been left by their parents or if the latter have in effect consented to the children going into the authority's care, for the parents can take them away at any time unless parental rights have been assumed. And parental rights can only be assumed for children already in the authority's care. Where the parents are not likely to hand the children over, the intervention of the magistrates is necessary. By the Children and Young Persons Act, 1933, ss. 61 and 62, as amended by the like (Amendment) Act, 1952, the local authority or the police may bring before the juvenile court any juvenile (under seventeen) who, having no parent or one unfit to exercise, or not exercising, proper care and guardianship, is either falling into bad associations or is exposed to moral danger or is beyond control or is ill-treated or neglected in a manner likely to cause unnecessary suffering or injury to health. Juveniles on whom an offence of violence, cruelty, neglect or indecency has been committed —or who are in the same household as another juvenile on whom such an offence has been committed—and vagrant juveniles may also be so brought before the court. A warrant to bring the juvenile may be granted, if necessary. Should the court desire time to consider what to do or wish for reports on him, he may be kept in a place of safety, such as a remand home or children's home, for a while. The court, after hearing the parents, the juvenile himself and the witnesses as to his conduct, can then send him to an approved school, commit him to the care of the local authority or other fit person, order his parent to enter into a recognisance to exercise proper care and guardianship or put him under the supervision of a probation officer or other person appointed by the court. Also, where an adult court—assizes, sessions or magistrates'—convicts any person of violence, cruelty, neglect or indecency on a juvenile, that court may, under s. 63, itself make any of the orders mentioned in s. 62 in respect of that juvenile, without having him brought before the juvenile court.

By s. 64 of the 1933 Act, a parent or guardian may himself bring a juvenile under seventeen before the juvenile court as being beyond his control and the court may then, with the parent's consent and if satisfied that he is beyond control, send him to an approved school, place him under the supervision of a probation officer or other appointed person or commit him to the care of the local authority or other fit person. (The difference between "supervision" and "committal to care" is that in the former case the juvenile will probably go on living at home but not in the latter case, unless and until "boarded-out" with his own parents.)

Parents whose children have been taken into the care of a local authority under the Children Act, 1948, s. 1 (whether or not parental rights have been assumed), or whose children have been sent to an approved school or committed to care under ss. 61 to 64 of the 1933 Act, may be ordered by a magistrates' court to contribute, until they are respectively sixteen, to their maintenance while they are in care or in the school. Orders committing to the care of a local authority remain in force until the juvenile is eighteen, and a juvenile himself, if sixteen and earning, may be ordered to contribute to his own maintenance. While an order committing to care is in force, the mother cannot draw family allowance for the child who is the subject of the order even though he may have been "boarded out" with her and, in such circumstances, she should be advised to apply for the revocation of the order.

The reader will have gathered from the above that, though the law makes ample provision for the care of children who are neglected, beyond control or in moral danger, its provisions are somewhat involved. One recalls some litigation with a municipal corporation during which the contents of certain minute books of the council became very relevant; the plaintiff sought to inspect them at the city hall and the corporation objected to his doing so. Great argument arose and many cases, statutes and opinions were considered and cited. When the question had finally been settled, the plaintiff's solicitors discovered that copies of all the relevant documents were also in the public library and could at all times have been seen there without any objection or difficulty. Likewise, the practitioner who is approached about the care and welfare of some child can either delve into the statutes and initiate or cause to be initiated the necessary proceedings himself, or, instead, consult the children's officer of the local authority immediately. If there are any proceedings before the juvenile court that officer will come into them anyhow and, of course, he is familiar not only with the law and the practice but also knows what to do to get the child properly looked after without delay.

Although local authorities now do a great deal for young people, there are still several charities continuing to do fine work for orphaned, neglected and ill-treated children. Proof of the high standard of their accomplishments is found in the report of the Curtis Committee, where, despite the financial difficulties besetting some of the charities, their homes and methods were contrasted favourably with those of some much richer local authorities. They continue to deserve support.

G. S. W.

CHARITABLE PARADOX

ONE may doubt whether Pope was not guilty of a *non sequitur* when he wrote that—

> "In Faith and Hope the world will disagree
> But all mankind's concern is Charity."

The things which are all mankind's, and even more all womankind's, concern have a way of becoming as complex, as ambiguous and as enigmatic as the human race itself. When a human being makes the declaration, "I love you," it has none of the relative clarity and simplicity of, say, the statement, "I have pneumonia." It may bear any one of a couple of thousand meanings and written out in long-hand (for it is itself a sort of short-hand symbol) it can assume a protean variety of forms ("so full of shapes is fancy that it alone is nigh fantastical"); devoted: "You embody my ideal and your will is my law"; or cannibalistic: "I have a managing disposition and it's you I want to manage"; or predatory: "I find your financial resources irresistible"; or uninhibited: "I am about to make an improper suggestion." Straightforward and single-minded these, once you know which is intended. But more likely, in any given case, the meaning is an unanalysable blend of contradictory sentiments and expectations shaken together in the sub-conscious, with intoxicating effects of varying potency.

And so it is with "charity," too, which even more subtly eludes definition. It can be as warmly glowing as "The Christmas Carol" or as cold as Mr. Bumble's workhouse, mystical as a theological virtue and as practical as a gift of a roast goose or a pair of shoes. And this is not surprising,

for if "love" changes its form and its content with the variety of human sentiments, charity in its original conception was the distilled essence of divine love operating on the visible world—impossible to confine within the ring-fence of words, so that those who would have expressed it found themselves rather enumerating its effects: "Charity suffereth long and is kind, charity envieth not, charity vaunteth not itself, is not puffed up, doth not behave itself unseemly, seeketh not her own, is not easily provoked, thinketh no evil, rejoiceth not in iniquity but rejoiceth in the truth, beareth all things, believeth all things, hopeth all things, endureth all things." Charity in that sense breathes the rarified atmosphere of the mountain tops of human experience.

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RICHARD ROE.

SURVEY OF THE WEEK

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PROGRESS OF BILLS

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Public Works Loans Bill [H.C.] [4th December.

HOUSE OF COMMONS

PROGRESS OF BILLS

Read Second Time:—

Town and Country Planning Bill [H.C.] [1st December.

he can be found, and, if he objects within a month, the matter is determined by the juvenile court.

It will have been seen from the above that children can be taken into care only if they have been left by their parents or if the latter have in effect consented to the children going into the authority's care, for the parents can take them away at any time unless parental rights have been assumed. And parental rights can only be assumed for children already in the authority's care. Where the parents are not likely to hand the children over, the intervention of the magistrates is necessary. By the Children and Young Persons Act, 1933, ss. 61 and 62, as amended by the like (Amendment) Act, 1952, the local authority or the police may bring before the juvenile court any juvenile (under seventeen) who, having no parent or one unfit to exercise, or not exercising, proper care and guardianship, is either falling into bad associations or is exposed to moral danger or is beyond control or is ill-treated or neglected in a manner likely to cause unnecessary suffering or injury to health. Juveniles on whom an offence of violence, cruelty, neglect or indecency has been committed —or who are in the same household as another juvenile on whom such an offence has been committed—and vagrant juveniles may also be so brought before the court. A warrant to bring the juvenile may be granted, if necessary. Should the court desire time to consider what to do or wish for reports on him, he may be kept in a place of safety, such as a remand home or children's home, for a while. The court, after hearing the parents, the juvenile himself and the witnesses as to his conduct, can then send him to an approved school, commit him to the care of the local authority or other fit person, order his parent to enter into a recognisance to exercise proper care and guardianship or put him under the supervision of a probation officer or other person appointed by the court. Also, where an adult court—assizes, sessions or magistrates'—convicts any person of violence, cruelty, neglect or indecency on a juvenile, that court may, under s. 63, itself make any of the orders mentioned in s. 62 in respect of that juvenile, without having him brought before the juvenile court.

By s. 64 of the 1933 Act, a parent or guardian may himself bring a juvenile under seventeen before the juvenile court as being beyond his control and the court may then, with the parent's consent and if satisfied that he is beyond control, send him to an approved school, place him under the supervision of a probation officer or other appointed person or commit him to the care of the local authority or other fit person. (The difference between "supervision" and "committal to care" is that in the former case the juvenile will probably go on living at home but not in the latter case, unless and until "boarded-out" with his own parents.)

Parents whose children have been taken into the care of a local authority under the Children Act, 1948, s. 1 (whether or not parental rights have been assumed), or whose children have been sent to an approved school or committed to care under ss. 61 to 64 of the 1933 Act, may be ordered by a magistrates' court to contribute, until they are respectively sixteen, to their maintenance while they are in care or in the school. Orders committing to the care of a local authority remain in force until the juvenile is eighteen, and a juvenile himself, if sixteen and earning, may be ordered to contribute to his own maintenance. While an order committing to care is in force, the mother cannot draw family allowance for the child who is the subject of the order even though he may have been "boarded out" with her and, in such circumstances, she should be advised to apply for the revocation of the order.

The reader will have gathered from the above that, though the law makes ample provision for the care of children who are neglected, beyond control or in moral danger, its provisions are somewhat involved. One recalls some litigation with a municipal corporation during which the contents of certain minute books of the council became very relevant; the plaintiff sought to inspect them at the city hall and the corporation objected to his doing so. Great argument arose and many cases, statutes and opinions were considered and cited. When the question had finally been settled, the plaintiff's solicitors discovered that copies of all the relevant documents were also in the public library and could at all times have been seen there without any objection or difficulty. Likewise, the practitioner who is approached about the care and welfare of some child can either delve into the statutes and initiate or cause to be initiated the necessary proceedings himself, or, instead, consult the children's officer of the local authority immediately. If there are any proceedings before the juvenile court that officer will come into them anyhow and, of course, he is familiar not only with the law and the practice but also knows what to do to get the child properly looked after without delay.

Although local authorities now do a great deal for young people, there are still several charities continuing to do fine work for orphaned, neglected and ill-treated children. Proof of the high standard of their accomplishments is found in the report of the Curtis Committee, where, despite the financial difficulties besetting some of the charities, their homes and methods were contrasted favourably with those of some much richer local authorities. They continue to deserve support.

G. S. W.

CHARITABLE PARADOX

ONE may doubt whether Pope was not guilty of a *non sequitur* when he wrote that—

> "In Faith and Hope the world will disagree
> But all mankind's concern is Charity."

The things which are all mankind's, and even more all womankind's, concern have a way of becoming as complex, as ambiguous and as enigmatic as the human race itself. When a human being makes the declaration, "I love you," it has none of the relative clarity and simplicity of, say, the statement, "I have pneumonia." It may bear any one of a couple of thousand meanings and written out in long-hand (for it is itself a sort of short-hand symbol) it can assume a protean variety of forms ("so full of shapes is fancy that it alone is nigh fantastical"); devoted: "You embody my ideal and your will is my law"; or cannibalistic: "I have a managing disposition and it's you I want to manage"; or predatory: "I find your financial resources irresistible"; or uninhibited: "I am about to make an improper suggestion." Straightforward and single-minded these, once you know which is intended. But more likely, in any given case, the meaning is an unanalysable blend of contradictory sentiments and expectations shaken together in the sub-conscious, with intoxicating effects of varying potency.

And so it is with "charity," too, which even more subtly eludes definition. It can be as warmly glowing as "The Christmas Carol" or as cold as Mr. Bumble's workhouse, mystical as a theological virtue and as practical as a gift of a roast goose or a pair of shoes. And this is not surprising,

for if "love" changes its form and its content with the variety of human sentiments, charity in its original conception was the distilled essence of divine love operating on the visible world—impossible to confine within the ring-fence of words, so that those who would have expressed it found themselves rather enumerating its effects: "Charity suffereth long and is kind, charity envieth not, charity vaunteth not itself, is not puffed up, doth not behave itself unseemly, seeketh not her own, is not easily provoked, thinketh no evil, rejoiceth not in iniquity but rejoiceth in the truth, beareth all things, believeth all things, hopeth all things, endureth all things." Charity in that sense breathes the rarified atmosphere of the mountain tops of human experience.

From those heights you may climb down, aided by the columns of the Oxford English Dictionary, past the conception of benignity of disposition expressing itself in the idea of Christ-like behaviour in external benevolence, till you touch the familiar earthy levels of simple kindness and natural affection, mixed with the notion of generous and spontaneous goodness; a disposition to judge hopefully and leniently of the character, aims and destinies of others and to make allowances for apparent shortcomings; fair-mindedness towards people disapproved of or disliked (this, says the dictionary, "being appraised as a magnanimous virtue"). We encounter the poor and the unfortunate and focus on them the idea of benevolence with the practical beneficences in which it manifests itself but, one step ahead, the practical beneficences take the ascendancy from the benevolence when we find ourselves rather bleakly face to face with "the public provision of almsgiving to the poor which has largely taken the place of almsgiving by individuals."

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HOUSE OF COMMONS

PROGRESS OF BILLS

Read Second Time:—

Town and Country Planning Bill [H.C.] [1st December.

Read Third Time :—

Agricultural Land (Removal of Surface Soil) Bill [H.C.] [5th December.

Greenock Corporation Order Confirmation Bill [H.C.] [2nd December.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Greenock Corporation.

In Committee :—

Transport Bill [H.C.] [3rd December.

STATUTORY INSTRUMENTS

Air Navigation (Fourth Amendment) Order, 1952. (S.I. 1952 No. 2032.)

Arbitration (Foreign Awards) No. 1 Order, 1952. (S.I. 1952 No. 2035.)

British Guiana (Legislative Council—Extension of Duration) Order in Council, 1952. (S.I. 1952 No. 2055.)

Carriage by Air (Basutoland, Bechuanaland Protectorate and Swaziland) Order, 1952. (S.I. 1952 No. 2036.)

Cleveland Water Order, 1952. (S.I. 1952 No. 2016.) 5d.

Clothing Industry Development Council (Dissolution) Order, 1952. 6d.

Coal Mines (Medical Examinations) General Regulations, 1952. (S.I. 1952 No. 2070.) 5d.

Emergency Powers (Amendment) Order in Council, 1952. (S.I. 1952 No. 2031.)

Fats and Cheese (Rationing) (Amendment) Order, 1952. (S.I. 1952 No. 2038.)

Flour (Amendment No. 4) Order, 1952. (S.I. 1952 No. 2041.) 8d.

Import Duties (Drawback) (No. 13) Order, 1952. (S.I. 1952 No. 2054.)

Lace Furnishings Industry (Export Promotion Levy) (Amendment) Order, 1952.

Lace Industry (Scientific Research Levy) (Amendment) Order, 1952.

Lancashire River Board Area (Freshwater Fisheries) Order, 1952. (S.I. 1952 No. 2058.)

Lincolnshire River Board (Reconstitution of the North East Lindsey Drainage Board) Order, 1952. (S.I. 1952 No. 2057.) 5d.

London Traffic (Prescribed Routes) (No. 25) Regulations, 1952. (S.I. 1952 No. 2066.)

Meat (Rationing) (Amendment No. 7) Order, 1952. (S.I. 1952 No. 2039.)

Medical Act, 1950 (Period of Employment as House Officers) Regulations Approval Order of Council, 1952. (S.I. 1952 No. 2050.)

Merchant Shipping (Safety Convention Countries) (Various) Order, 1952. (S.I. 1952 No. 2034.)

National Health Service (General Dental Services) Amendment Regulations, 1952. (S.I. 1952 No. 2043.) 6d.

Non-Contentious Probate (No. 2) Rules, 1952. (S.I. 1952 No. 2048 (L.13).) See p. 790, *ante*.

Nurses (Regional Nurse-Training Committees) (Scotland) Amendment (No. 2) Order, 1952. (S.I. 1952 No. 2047 (S. 106).) 5d.

Retention of Cables and Pipe over and under Highways (Lincolnshire—Parts of Lindsey) (No. 2) Order, 1952. (S.I. 1952 No. 2045.)

Retention of Cables and Pipe under Highways (Lincolnshire—Parts of Lindsey) (No. 4) Order, 1952. (S.I. 1952 No. 2061.)

Retention of Cables, Mains and Pipes over and under Highways (Lincolnshire—Parts of Lindsey) (No. 3) Order, 1952. (S.I. 1952 No. 2046.) 5d.

Retention of Railway across Highway (Wiltshire) (No. 3) Order, 1952. (S.I. 1952 No. 2063.)

Singapore Colony (Amendment) (No. 2) Order in Council, 1952. (S.I. 1952 No. 2037.)

Stopping up of Highways (Cambridgeshire) (No. 2) Order, 1952. (S.I. 1952 No. 2060.)

Stopping up of Highways (Hertfordshire) (No. 3) Order, 1952. (S.I. 1952 No. 2051.)

Stopping up of Highways (Middlesex) (No. 5) Order, 1952. (S.I. 1952 No. 2062.)

Stopping up of Highways (Plymouth) (No. 5) Order, 1952. (S.I. 1952 No. 2053.)

Stopping up of Highways (West Riding of Yorkshire) (No. 4) Order, 1952. (S.I. 1952 No. 2052.)

Transfer of Functions (Slaughter-houses and Knackers' Yards) Order, 1952. (S.I. 1952 No. 2033.) 5d.

Wages Regulation (Licensed Non-residential Establishment) (Amendment) Order, 1952. (S.I. 1952 No. 2056.)

Wakefield Water Order, 1952. (S.I. 1952 No. 2059.) 8d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

On the 13th November, 1952, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of RICHARD LESLIE SHARPLES, of 35 North Albert Street, Fleetwood, 43 Queen Street, Blackpool, and 46A Victoria Road, Cleveleys, all in the County of Lancaster, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On the 13th November, 1952, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that HENRY CASIMIR NOEL LAMBERT, of Britannic House, St. Peters Road, Bournemouth, be suspended from practice as a solicitor for a period of six (6) months from 31st December, 1952, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

DEVELOPMENT PLANS

COUNTY BOROUGH OF BLACKPOOL DEVELOPMENT PLAN

The above development plan was on 1st December, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the County Borough of Blackpool. A certified copy of the plan as submitted for approval may be inspected from 9 a.m. to 5.30 p.m. (Saturdays 9 a.m. to 12 noon) at the office of the Borough Surveyor, Municipal Buildings, Town Hall Street, Blackpool. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 24th January, 1953, and should state the grounds on which it is made. Persons making any objection or representation may register their names and addresses with the Council of the County Borough of Blackpool and will then be entitled to receive notice of the eventual approval of the plan.

SUNDERLAND DEVELOPMENT PLAN

As already noted, the Minister of Housing and Local Government on 10th November approved (with modifications) the above development plan. A certified copy of the plan as approved may be inspected from 10 a.m. to 12 noon and 2 p.m. to 4 p.m. (Saturdays 10 a.m. to 12 noon) at the office of the Borough Engineer and Surveyor, Athenæum Buildings, 27 Fawcett Street, Sunderland. The plan became operative as from 28th November, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 28th November, 1952, make application to the High Court.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 102–103 Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

★ Classified Advertisements ★

PUBLIC NOTICES—INFORMATION REQUIRED—CHANGE OF NAME

2s. 6d. per line as printed

APPOINTMENTS VACANT—APPOINTMENTS WANTED—PRACTICES AND PARTNERSHIPS and all other headings

7s. 6d. for 30 words. Additional lines 1s. 0d. Box Registration Fee 1s. 0d. extra

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64, inclusive, or a woman aged 18-59, inclusive, unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952

PUBLIC NOTICES

COUNTY BOROUGH OF MIDDLESBROUGH

ASSISTANT SOLICITOR required. Grade A.P.T. Va–VII (£625–£785). N.J.C. Conditions, Superannuation Scheme.

Application forms from the Town Clerk, to be returned by 31st December, 1952.

BOROUGH OF GRANTHAM

ASSISTANT SOLICITOR wanted. Salary within £710 × £25–£835. Local Government experience not essential, but applicants must have sound knowledge of conveyancing. As Town Clerk is also Clerk of the Peace, knowledge of the work of quarter sessions would be an advantage. A house can be made available. Applications, giving age and three references, should be delivered by Monday, 29th December, 1952, to the Town Clerk, Guildhall, Grantham.

COUNTY BOROUGH OF MIDDLESBROUGH

MAGISTRATES' COURTS COMMITTEE

APPOINTMENT OF JUSTICES' CLERK. JUSTICES OF THE PEACE ACT, 1949

Applications are invited from Barristers or Solicitors qualified in accordance with the above Act for the whole-time appointment of Clerk to the Justices for this County Borough.

The Clerk will be required to take up his duties on or about 1st April, 1953. The commencing salary will be in accordance with the scale to be determined by the National Joint Negotiating Committee as approved by the Home Secretary. Middlesbrough has a population of 147,000. The appointment will be permanent and superannuable. Applications (marked " C " on the outside of the envelope) must be submitted to me before 10 a.m. on 8th January, 1953, and should give qualifications, age, experience and the names of two persons to whom reference may be made.

T. BELK,
Clerk of the Committee.

Magistrates' Court,
Middlesbrough.

BOROUGH OF SOUTHGATE

APPOINTMENT OF SECOND ASSISTANT SOLICITOR

Applications are invited for the appointment of Second Assistant Solicitor. Applicants must have a sound knowledge of conveyancing (including Land Registry practice), and Police and County Court procedure. The commencing salary will be at a point within A.P.T. Grades VII–IX (£710–£935 per annum) according to the experience and qualifications of the successful applicant. The appropriate " London Weighting " allowance will be payable in addition.

Superannuable post, subject to medical examination. National Scheme of Conditions of Service apply. The person appointed must devote his whole time to duties of the office and must not engage in private practice.

Application forms are obtainable from the undersigned, to whom they should be returned with the names of two referees, by not later than Wednesday, the 31st December, 1952.

Canvassing either directly or indirectly will be a disqualification.

GORDON H. TAYLOR,
Town Clerk.

Southgate Town Hall,
Palmers Green, N.13.

NORTHAMPTON BOROUGH COUNCIL

ASSISTANT SOLICITOR

A.P.T.Va/VIII £625–£785

Particulars of the above appointment and form of application, to be returned by 31st December, may be obtained from me. Municipal experience not essential.

C. E. VIVIAN ROWE,
Town Clerk.

Guildhall,
Northampton.

NORTH EAST METROPOLITAN REGIONAL HOSPITAL BOARD

ASSISTANT SOLICITOR

Applications are invited for post of ASSISTANT SOLICITOR on the Staff of the NORTH EAST METROPOLITAN REGIONAL HOSPITAL BOARD from admitted solicitors with experience in litigation, High Court practice and conveyancing. Salary in accordance with Grade F Scale, viz.: £610 p.a. × £25 (5) to £735 p.a., plus London weighting. Applications giving age and full details of education, experience and qualifications together with names of two referees should be sent to The Secretary, 11A Portland Place, W.1, within fifteen days of the appearance of this advertisement.

APPOINTMENTS VACANT

WANTED Costs Clerk in busy office in South Lincolnshire. Salary according to experience.—Box 1289, Solicitors' Journal, 102/3 Fetter Lane, E.C.4.

FIRM of Solicitors in Wembley District require efficient shorthand-typist with high speeds and legal experience.—Write stating age, experience and salary required.—Box 1290, Solicitors' Journal, 102/3 Fetter Lane, E.C.4.

LITIGATION Clerk required with some knowledge of Queen's Bench and Divorce practice by firm of Solicitors off Strand. Salary by arrangement. Pension Fund in operation.—Box 1294, Solicitors' Journal, 102/3 Fetter Lane, E.C.4.

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